



MAPS

Methodology for Assessing
Procurement Systems

ASSESSMENT OF TIMOR LESTE PUBLIC PROCUREMENT SYSTEM

2024





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TIMOR-LESTE

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Acronyms¹

ADB	Asian Development Bank
ADN	National Development Agency (<i>Agência de Desenvolvimento Nacional</i>)
AEMTL	Timor-Leste Businesswomen Association (<i>Asosiasaun Emprezarial Feto Timor-Leste</i>)
ANATL	Air Navigation Administration
ASEAN	Association of Southeast Asian Nations
ATAG	Assessment's Technical Advisory Group
BTL-EP	Timor-Leste Water Company
CAC	Anti-Corruption Commission (<i>Comissão anti-corrupção</i>)
CAFI	Council for Administration of Infrastructure
CCI-TL	Chamber of Commerce and Industry of Timor-Leste
CdC	Chamber of Accounts (<i>Camara de Contas</i>) - <i>Câmara de Contas do Tribunal Superior Administrativo, Fiscal e de Contas</i>
CFP	Civil Service Commission (<i>Comissão da Função Pública</i>)
CGE	General State Account (<i>Conta Geral do Estado</i>)
CNA	National Procurement Commission (<i>Comissão Nacional de Aprovisionamento</i>)
CoM	Council of Ministers
CPAR	Country Procurement Assessment Report
CPF	Country Partnership Framework
CPIA	Country Policy and Institutional Assessment
CPLP	Community of Portuguese Language Countries
CSO	Civil Society Organization
DNPPP	National Directorate of Public-Private Partnerships (<i>Direção Nacional de Parcerias Público-Privadas</i>)
EAP	East Asia and Pacific
EC	European Commission
EDTL	Timor-Leste Electricity Company (<i>Electricidade de Timor-Leste</i>)
e-GP	Electronic Government Procurement
FCAS	Fragile and Conflict-Affected States
FCP	Commitment and Payment Voucher (<i>Formulario de compromisso de pagamento</i>)
FDI	Foreign Direct Investment
FONGTIL	Forum ONG Timor-Leste
GDP	Gross Domestic Product
GIG	General Inspection Office (<i>Gabinete de Inspeção-Geral</i>)
GNI	Gross National Income
GPRCGFP	Office for Policy, Reforms, and Capacity Building in PFM (<i>Gabinete de Política de Reforma e Capacitação em Gestão das Finanças Públicas</i>)
GRP	Government Resource Planning
GSIIIGF	Office of Integrated Systems of Financial Management Information (<i>Gabinete de Sistemas Integrados de Informação de Gestão Financeira</i>)
HCI	Human Capital Index
IEG	State General Inspectorate (<i>Inspecção Geral de Finanças</i>)
IFI	International Financial Institution
IFMIS	Integrated Financial Management Information System

¹ Acronyms in Timor-Leste generally are reflective of the Portuguese terminology.

ILO	International Labour Organization
IT	Information Technology
JSMP	Judicial System Monitoring Program
KPI	Key Performance Indicator
LOCC	Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court (<i>Orgânica da Câmara de Contas do Tribunal Superior Administrativo, Fiscal e de Contas</i>)
MAPS	Methodology for Assessing Procurement Systems
MASC	MAPS Assessment Steering Committee
MCC	Millennium Challenge Corporation
MoF	Ministry of Finance
MoPW	Ministry of Public Works
MOU	Memorandum of Understanding
MP	Member of Parliament
MSMEs	Micro, Small, and Medium Enterprises
NGO	Nongovernment Organization
NLCA	National Liberation of Combatants Affairs
OBS	Open Budget Survey
OCDS	Open Contracting Data Standards
ODA	Official Development Assistance
PDID	District Integrated Development Planning (<i>Planeamento de Desenvolvimento Integrado Distrital</i>)
PEFA	Public Expenditure and Financial Accountability
PFM	Public Financial Management
PFMMDTF	Public Financial Management Multi-Donor Trust Fund
PFMO	Partnership for the improvement of service delivery through the strengthening of management and supervision in Public Finances in Timor-Leste (<i>Parceria para a melhoria da prestação de serviços através do reforço da gestão e supervisão das Finanças Públicas em Timor-Leste</i>)
PGR	General Prosecutor Office (<i>Procuradoria Geral da República</i>)
PIM	Public Investment Management
PPL	Public Procurement Law
PPP	Public-Private Partnership
RACI	Responsible, Accountable, Consulted, and Informed
RAEOA	Special Administrative Region of Oecusse Ambeno (<i>Região Administrativa Especial Oecusse Ambeno</i>)
RPCGE	Report and Opinion on the State General Account (<i>Relatório e Parecer sobre a Conta Geral do Estado</i>)
RTTL	Radio and TV Company
SAI	Supreme Audit Institution
SAMES	Drugs and Health Equipment Service (<i>Serviço Autónomo de Medicamentos de Saúde</i>)
SDGs	Sustainable Development Goals
SDP	Strategic Development Plan
SGP	Major Project Secretariat (<i>Secretariado de Grande Projetos</i>)
SIDS	Small Island Developing States
SMEs	Small and Medium Enterprises
SOE	State-Owned Enterprise
SOP	Standard Operating Procedure
SPP	Sustainable Public Procurement

TLAMP	Timor-Leste ASEAN Mobilization Plan
TNA	Training Needs Assessment
TTL	Task Team Leader
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
ZEESM	Special Zone of Social Market Economy (<i>Zonas Especiais de Economia Social de Mercado de Timor-Leste</i>)
WTO	World Trade Organization

Currency Unit: US\$1 = TLD 1

Fiscal Year: January 1 - December 31

Executive summary

Timor-Leste is a post-conflict, resource rich island country with an open economy highly dependent on imports of goods and services. As it contends with legacies of past conflict, Timor-Leste remains fragile, as evidenced by weak institutional capacity and governance and high poverty. The government expenditure levels, fueled by oil revenue, have been among the highest in the world over the past decade;² hence, raising the quality of public investment, including through achieving value for money in public procurement, is critical to the country sustainable development. The Government of Timor-Leste acknowledges the importance of public procurement efficiency in its strategy, underscoring that improving public procurement is essential to reaching its economic and social goals. The broad development objective of this Methodology for Assessing Procurement Systems (MAPS) assessment is to support the government to further improve the performance of the public procurement system and yield optimal results in the use of public funds and delivery of services to its citizens, while maintaining high standards of integrity.

Following the Country Procurement Assessment Report (CPAR) in 2003, the government implemented a new legal framework for public procurement, starting in 2005 when the first comprehensive public procurement legislation was adopted, and institutional architecture was established. The procurement legal framework from 2005 was contained in the public procurement law (PPL 2005), with multiple subsequent amendments, and in a number of other decrees. This combined with lack of implementing provisions has rendered the system fragmented and lacking clarity. The government has acknowledged the desirability of consolidating and improving the procurement legal framework, leading to the adoption of a new public procurement decree, effective from January 1, 2023 (PPL 2022).

The MAPS assessment was launched in 2020 and covered both the central and local governments. A key challenge arose from the COVID-19 pandemic situation, which prevented in-person interaction between the Assessment Team and the stakeholders and resulted in delays in information and data collection. An additional complexity arose due to the ongoing preparation by the government of the new draft PPL 2022 in parallel with the main activities of the MAPS assessment. The Assessment Team was able to engage in constructive dialogue with the government in 2021 and provided suggestions on high priority issues to feed into the final process of drafting of PPL 2022.

The MAPS assessment acknowledges progress and valuable principles underlying the public procurement legal framework that promotes fairness, equality, and competition. It also recognizes that steps have been taken by the government to improve efficiency and transparency by centralizing complex procurement and advisory technical services and increasingly advertising tender opportunities on a central procurement portal. It is also notable that Timor-Leste has developed an anti-corruption framework by establishing the Anti-Corruption Commission (*Comissão anti-corrupção*, CAC) and adopting a modern anti-corruption law with requirements that have the potential to strengthen integrity in public procurement.

At the same time, the assessment has identified material gaps that hinder the ‘value for money with integrity’ objective. Thus, besides the fragmented legal framework and lack of implementing regulations, effective policy formulation and implementation are hindered by the lack of a coordinating entity/mechanism for public procurement and the dearth of practical guidance combined with weak capacity at various levels of state administration. Trust in the system and its effective operation are further

² World Bank. 2021. PER Changing Course: Towards Better and More Sustainable Spending.

affected by the absence of an independent appeal mechanism, weak debarment procedures and lack of mechanisms for regular stakeholder engagement.

Priority actions for improvement, formulated considering the Timor-Leste context and grouped along priority areas, are as follows:

Strengthen the legal and regulatory framework and ensure its efficient implementation

Prioritize the implementation of the new legal framework and secure appropriate leadership with the involvement of relevant stakeholders. Support timely development of the framework and provision of practical tools, such as regulations and guidelines and updated/new standard bidding documents, to minimize the potential disruptions caused by the transition to a new legal system.

Make improvements³ in other key areas identified by this MAPS assessment that have not been addressed in the newly adopted PPL, including debarment process, appeal mechanism, contract management, sustainability, state-owned enterprise (SOE) regulations.

Quick win: Publish all the documents comprising the new legal and regulatory framework in a single location and make them available in the official and working languages used by procurement stakeholders in Timor-Leste.

Improve the institutional clarity and develop a coordinating mechanism for public procurement

Improve the institutional clarity and effectiveness based on a critical and evidence-based review of the current institutional setup. Functions may be consolidated in one entity or assigned to various entities. If assigned to multiple entities, their role should be clearly described, to avoid gaps and overlaps and a coordination mechanism should be set in place, to avoid the “silo” effect, to provide leadership, and promote a cohesive approach to national procurement policy formulation and implementation.

Quick win: Review and update National Procurement Commission (Comissão Nacional de Aprovisionamento, CNA) operational regulation to clarify its organizational structure, resources, and responsibilities for it to effectively carry out its responsibilities assigned by PPL 2022.

Develop capacity-building strategy and programs for the public procurement workforce

Strengthen the capacity of the public procurement workforce and develop a roadmap for public procurement professionalization. To this end, formulate a procurement capacity-building strategy informed by a training needs assessment (TNA); design training programs and materials for public procurement workforce and private sector actors; and further develop a roadmap for accreditation, certification, and professionalization of the procurement function. Stabilize the workforce in procurement by securing job tenure and reducing the reliance of fixed-term consultants.

Quick win: Provide urgent training/informative sessions for the government workforce on PPL 2022, the implementing regulations, instructions/guides, and standard bidding documents. Prioritize CNA.

³ For a complete list of areas that require improvement see the high-level summary in Annex 10 in Volume III.

Establish a public procurement performance monitoring and measurement mechanism

Develop a performance monitoring and measuring mechanism supported by e-procurement, coupled with the promotion of a performance culture among the procurement cadre. It is advisable to assess the potential data sources, identify mechanisms to collect the information and define a set of key performance indicators (KPIs) to monitor performance across the whole procurement and contract management cycle to support improved procurement outcomes and evidence-based policy formulation.

Quick win: Take stock of the data currently provided in government resource planning (GRP)/Integrated Financial Management Information System (IFMIS)/procurement portal, improve collection and quality for a representative data set and enable the system to aggregate data and generate a few key indicators and reports for management use.

Launch the development of e-procurement in Timor-Leste to promote efficient, transparent procurement

Implement the e-procurement agenda by undertaking a readiness assessment along with a strategic study and an implementation roadmap for the gradual establishment and rollout of a full-fledged e-procurement system adapted to the country conditions. Such a strategy should take into account the maturity of the e-government ecosystem, ensure interoperability with other government systems (for example, IFMIS, taxation, company registration and complaints) and enable data analytics and governance filters.

Quick win: Improve the current procurement portal for better-quality and real-time information: completeness, accuracy, timeliness, downloadability, searchability and links to actual bidding documents

Adopt a more strategic approach to procurement and contract management

Strengthen procurement planning including market analysis and private sector engagement to promote ‘fit-for-purpose’ techniques, improved design and contract packaging, better calibration of effort based on risk and complexity, and optimal choice of sustainability criteria based on a Sustainable Procurement Strategy. Achieving these targets needs to be supported by relevant guidance and training.

Strengthen contract management through regular supervision and monitoring of contracts including effectiveness of the sustainability requirements adopted. Boost the capacity of the National Development Agency (*Agência de Desenvolvimento Nacional*, ADN) and enhance the technical knowledge and practical skills at the executing agency levels.

At the national level, assess options to increase the efficiency of recurrent procurement for commonly used goods and services to increase value for money and predictability, reduce the transaction cost and increase the level of preparedness for unforeseen natural emergencies, including through framework agreements.

Quick win: Revisit/update Best Practice Guides to include all relevant features of strategic procurement. Make use of market consultation and engagement as part of the procurement preparation.

Create the enabling environment for the private sector to participate in the public procurement market.

Create a framework for a consistent dialogue with the private sector to collect feedback and address constraints that negatively affect the private companies' effective participation in the public procurement market (for example, low capacity and payment delays).

Develop targeted programs to build the private sector capacity, to be able to access procurement information, understand the government public procurement requirements, and submit successful bids.

Quick win: Provide urgent training/informative sessions for the private sector on the new Procurement Decree Law, the implementing regulations, instructions/guides, and standard bidding documents.

Continue to improve public procurement oversight

Develop a more robust procurement control and audit system that ensures appropriate coverage and follow-up on audit recommendations, supported by standard procedures and auditor training in procurement. Improve the record management system to secure the audit trail and effective oversight.

Quick win: Provide urgent training/informative sessions for auditors on the new Procurement Decree-law and the implementing regulations

Strengthen integrity in public procurement

Strengthen the complaint/appeal mechanism based on a critical study of the information available and stakeholders' views and identify mechanisms to improve its independence, transparency, and effectiveness.

Promote increased oversight of administrative debarment process and debarment decisions (for example, by way of centralized monitoring) to ensure that the approach adopted is consistent and proportionate, and there is greater transparency through the publication of the debarment decisions on the portal.

Continue to enforce the integrity mechanisms under the anti-corruption law and generate fraud and corruption statistics with clear identification of procurement cases. Capture integrity requirements (including beneficial ownership disclosure) in the procurement guides and tender documents.

Develop a consultative process through a formal mechanism with civil society organizations (CSOs) active in governance/public financial management (PFM) and social audit to enable an effective civil society oversight of public procurement supported by increased access to information (awards, contract progress, direct contracting, and appeals).

Quick wins: Develop and disseminate a user-friendly guide on the conduct of debarment and hierarchical appeal to ensure consistency and clarity. Develop forms/templates for procurement staff, including members of the evaluation committees, to declare conflict of interest and commit to integrity and confidentiality. Include beneficial ownership in the procurement secondary legislation, bidding documents, instructions, to ensure its effective implementation. Develop a code of ethics for the public agents involved in procurement, aligned with the anti-corruption regulations, to address specific integrity risks.

Next steps:

The implementation of the MAPS agenda concurrently with and in the context of the implementation of the new PPL will entail a considerable mobilization of resources and require strong interinstitutional cooperation, ideally under the coordination and monitoring of a designated Ministry of Finance (MoF) department and a multistakeholder task force. The MAPS strategic action plan will be widely disseminated and is expected to be supported by development partners active in Timor-Leste. Such reforms can benefit from the momentum created by this MAPS assessment and the government's increased awareness of the importance of public procurement for the efficient use of funds, private sector development and effective delivery of services to citizens in both normal and crisis situations.

Overview of compliance

An overview of the level of compliance with the MAPS indicators is presented below. Each sub-indicator is color-coded to match the findings according to the scheme presented.

Green = full compliance

Yellow = gaps identified

Red = substantial gaps identified

PILLAR I - Legal, Regulatory and Policy Framework	
1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.	1(a) – Scope of application and coverage of the legal and regulatory framework
	1(b) – Procurement methods
	1(c) – Advertising rules and time limits
	1(d) – Rules on participation
	1(e) – Procurement documentation and technical specifications
	1(f) – Evaluation and award criteria
	1(g) – Submission, receipt, and opening of tenders
	1(h) – Right to challenge and appeal
	1(i) – Contract management
	1(j) – Electronic Procurement (e-procurement)
	1(k) – Norms for safekeeping of records, documents and electronic data.
	1(l) – Public procurement principles in specialized legislation
2. Implementing regulations and tools support the legal framework.	2(a) – Implementing regulations to define processes and procedures
	2(b) – Model procurement documents for goods, works, and services
	2(c) – Standard contract conditions
	2(d) – User's guide or manual for procuring entities
3. The legal framework reflects the country's secondary policy objectives and international obligations	3(a) – Sustainable Public Procurement (SPP)
	3(b) – Obligations deriving from international agreements
PILLAR II - Institutional Framework and Management Capacity	
4. The public procurement system is mainstreamed and well integrated into the public financial management system.	4(a) – Procurement planning and the budget cycle
	4(b) – Financial procedures and the procurement cycle
5. The country has an institution in charge of the normative/regulatory function.	5(a) – Status and legal basis of the normative/regulatory institution function
	5(b) – Responsibilities of the normative/regulatory function
	5(c) – Organization, funding, staffing, and level of independence and authority.
	5(d) – Avoiding conflict of interest
	6(a) – Definition, responsibilities and formal powers of procuring entities

6. Procuring entities and their mandates are clearly defined.	6(b) – Centralized procurement body
7. Public procurement is embedded in an effective information system.	7(a) – Publication of public procurement information supported by information technology *
	7(b) – Use of e-procurement *
	7(c) – Strategies to manage procurement data *
8. The public procurement system has a strong capacity to develop and improve.	8(a) – Training, advice and assistance
	8(b) – Recognition of procurement as a profession
	8(c) – Monitoring performance to improve the system
PILLAR III - Public Procurement Operations and Market Practices	
9. Public procurement practices achieve stated objectives.	9(a) – Planning
	9(b) – Selection and contracting
	9(c) – Contract management
10. The public procurement market is fully functional.	10(a) – Dialogue and partnerships between public and private sector
	10(b) – Private sector's organization and access to the public procurement market
	10(c) – Key sectors and sector strategies
PILLAR IV - Accountability, Integrity, and Transparency of Public Procurement System	
11. Transparency and civil society engagement foster integrity in public procurement.	11(a) – Enabling environment for public consultation and monitoring
	11(b) – Adequate and timely access to information by the public
	11(c) – Direct engagement of civil society
12. The country has effective control and audit systems.	12(a) – Legal framework, organization and procedures of the control system
	12(b) – Coordination of controls and audits of public procurement
	12(c) – Enforcement and follow-up on findings and recommendations
	12(d) – Qualification and training to conduct procurement audits
13. Procurement appeals mechanisms are effective and efficient.	13(a) – Process for challenges and appeals
	13(b) – Independence and capacity of the appeals body
	13(c) – Decisions of the appeals body
14. The country has ethics and anticorruption measures in place.	14(a) – Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties
	14(b) – Provisions on prohibited practices in procurement documents
	14(c) – Effective sanctions and enforcement systems
	14(d) – Anti-corruption framework and integrity training
	14(e) – Stakeholder support to strengthen integrity in procurement
	14(f) – Secure mechanism for reporting prohibited practices or unethical behavior
	14(g) – Codes of conduct/codes of ethics and financial disclosure rules

1. Introduction

Strategic Context and Rationale of the Assessment

1. **Timor-Leste is a post-conflict, resource-rich island country⁴ with an open economy highly dependent on imports of goods and services.** The key challenge for the country is to translate the financial wealth resulting from oil revenues into sustained prosperity for its people⁵. Timor-Leste's important oil revenues coupled with an underdeveloped private sector have translated into a significant share of public expenditures relative to the gross domestic product (GDP). Overall, public spending averaged 86 percent of GDP between 2008 and 2019,⁶ one of the highest expenditures to GDP ratio in the world. Hence raising the quality of public investment including through achieving value for money in public procurement is critical to the country's sustainable development and is high on the government agenda.

2. **The move to a more strategic and risk based public procurement** is also prompted by other considerations, for instance, the current challenges Timor-Leste, an import-dependent country, has to face in the international markets because of supply chain disruptions, logistics hurdles, and inflationary pressures. Similarly, the country's exposure to climate change entails sophisticated policies to mitigate the related risk and procurement is an important tool to lower the environmental footprint of government massive investment programs. Furthermore, the country's exposure to natural events such as tropical cyclones, requires increased focus on disaster preparedness systems based on strategic analysis supported by robust risk assessments to ensure continued supply to Timorese citizens should such adverse situations occur.

3. **Previous assessments, including the 2018 Public Expenditure and Financial Accountability (PEFA), identified the key challenges** faced by the country's public procurement system that included an outdated legal framework, weak human capital capacity in public procurement, poor compliance and other challenges that have undermined the achievement of optimal results. Therefore, the government decided to take advantage of the Methodology for Assessing Procurement Systems (MAPS) revised analytic framework to get more visibility into the existing challenges as well as the opportunities to improve public procurement outcomes while managing increased supply risks in the global market.

4. **In this context, this MAPS assessment was launched at the request of the government through its Ministry of Finance (MoF) to the World Bank** to provide support in conducting an assessment of the country public procuring system using the MAPS 2018 methodology. The Asian Development Bank (ADB) joined the Assessment Team providing additional technical and financial support. While there were other independent studies on public procurement (for example, 2003 World Bank Country Procurement Assessment Report [CPAR], 2009 World Bank Health study, 2009 World Bank country systems assessment, and 2018 PEFA), this MAPS is considered the first comprehensive government-led assessment on public procurement that evaluates the strengths and weaknesses of the public procurement system and formulates evidence-based recommendations and follow-up actions incorporated in a strategic action plan. Early in the concept phase of this assessment, the government identified a key area where the MAPS could effectively and immediately contribute, that is the consolidation and update of the existing legal and regulatory framework by drawing on the experience gained in the application of the current law and

⁴ Timor-Leste is both a Small Island Developing State (SIDS) and a Fragile Conflict-Affected State (FCAS).

⁵ World Bank, Country Partnership Framework (CPF) for the Democratic Republic of Timor-Leste for the period FY 2020-2024

⁶ World Bank, 2021, PER Changing course – towards better and more sustainable spending

the most recent developments in the global public procurement legal practice and technology, as appropriate for the Timor-Leste conditions.

Development Objectives and the scope of the Assessment

5. **The broad development objective** of this assessment using the MAPS 2018 methodology, according to the Concept Note, is to support the government to improve the performance of the public procurement system and yield optimal results in the use of public funds and delivery of services to its citizenry while maintaining high standards of integrity. The MAPS assessment will, therefore, aim to support the development of a sustainable and modern procurement system in Timor-Leste and help prioritize the government actions to address the areas needing further improvement to achieve value for money in the use of public funds at both the national and subnational levels. Particular attention has been given to how public procurement is affected by Timor-Leste's fragility context, the geographical conditions, its low capacity, small domestic market, and high dependence on imports.

6. **The scope of the assessment includes** the national government procurement under the MoF jurisdiction, that is, ministries and departments/agencies and local government/municipalities. Its scope does not include public private partnership projects,⁷ state owned enterprises (SOEs)⁸ and the Village Program Procurement.⁹ Based on the information available to the team, it was not possible to establish the share of these exclusions in the overall government procurement. PPP and SOE procurement may be considered in the scope of a follow-up MAPS assessment using the MAPS specialized assessment tools.

Methodology of the Assessment

7. **MAPS is a universal tool** that aims to lay the foundation for a well-governed public procurement system that helps meet policy objectives of increasing public trust, enhancing well-being, and building more prosperous and inclusive societies. It offers a robust, analytical basis to identify the most critical constraints and opportunities facing Timor-Leste in public procurement and formulate key priorities to advance the country public procurement agenda consistent with the government's sustainable development agenda and taking into account the idiosyncrasies related to Timor small island and fragile state conditions. To this end, the MAPS assessment takes a comprehensive view of the public procurement systems and the environment in which they operate and covers four main pillars: (I) Legal, Regulatory and Policy Framework, (II) Institutional Framework and Management Capacity, (III) Procurement Operations and Market Practices, and (IV) Accountability, Integrity, and Transparency of the Public Procurement System. They are assessed against 14 indicators, 55 sub-indicators and 210 criteria.

⁷ Currently only one PPP project is in the implementation and operation stage (Tibar Bay Port PPP) and one in the procurement and negotiation stage (Medical Diagnostics) while others are in the feasibility stage (Affordable Housing, Cristo Rei and Presidente Nicolau Lobato International Airport).

⁸ SOEs include the Electricity Company (EDTL) the National Oil Company (Timor Gap), the Water Company, (BTL-EP), Radio and TV Company (RTTL) and the Air Navigation Administration (ANATL).

⁹ [http://www.pnds.gov.tl/website/about-](http://www.pnds.gov.tl/website/about-pnds/#:~:text=The%20Programa%20Nasional%20Dezenvolvimento%20Suku,infrastructure%20projects%20in%20their%20village:Villages%20Suku)

[pnds/#:~:text=The%20Programa%20Nasional%20Dezenvolvimento%20Suku,infrastructure%20projects%20in%20their%20village:Villages%20Suku](http://www.pnds.gov.tl/website/about-pnds/#:~:text=The%20Programa%20Nasional%20Dezenvolvimento%20Suku,infrastructure%20projects%20in%20their%20village:Villages%20Suku) receive an annual grant of US\$40,000–US\$70,000 directly from the Government to plan, construct, and manage their own small-scale infrastructure projects in alignment with the village development priorities. Infrastructure that can be built or refurbished includes water systems, local roads, community halls or schools.

8. **The MAPS assessment was conducted in three phases:**

- **The preparatory phase** of the assessment consisted in building consensus among the MAPS key actors, the government, World Bank and ADB, on the assessment content and process including its objectives, key stakeholders, the composition of the Assessment Team, Steering Committee, the government counterpart team, and development of the Assessment Concept Note.
- **The assessment phase** included the desk review of legal documents and available studies followed by interviews and collection of qualitative and quantitative data on the performance of the system including through a private sector survey. All this information was analyzed through the MAPS three-step approach (see Table 1).
- **Reporting and validation phase.** The draft Timor-Leste assessment report and recommended action plan were shared with members of the Assessment Steering Committee and key findings and recommendations were presented to and discussed with all key stakeholders in the Validation Workshop which was held on October 27, 2022. The feedback and comments received during the Validation Workshop were considered in the revised report, subject to subsequent review by the Assessment's Technical Advisory Group (ATAG)/MAPS Secretariat as per the MAPS validation requirements.

Table 1: MAPS - Three-step approach

Step 1	Review of the public procurement systems applying assessment criteria expressed in qualitative terms. Provide detailed information on actual findings of the qualitative analysis.
Step 2	Review of the public procurement systems applying a defined set of quantitative indicators and detail the findings of this quantitative analysis
Step 3	Conduct the gap analysis and identify the substantive/material gaps. Sub-indicators that exhibit a 'substantive gap' are to be clearly marked to illustrate the need for developing adequate actions to improve the quality and performance of the system. Assign 'red flags' to highlight any element that significantly impedes the achievement of the recommendations, particularly when the solution lies outside the public procurement system.

Source: MAPS Core Methodology 2018.

9. **The overall assessment timeline** with key milestones starting from the government request for conducting assessment till the Stakeholder Validation Workshop is laid out in Box 1. More detailed information on the analytic approach and supported MAPS tools is presented in the subsequent paragraphs.

Box 1: Timor-Leste MAPS timeline – Key Milestones

- **July 19, 2019:** Request from the government/MoF for technical assistance from the World Bank to conduct an assessment of Timor-Leste procurement system following revised MAPS
- **April 23, 2020:** Virtual meeting with the MoF counterpart team to discuss the MAPS Concept Note
- **September 2020:** Finalization of draft Concept Note with feedback from the ATAG
- **October 27, 2020:** Virtual meeting with MoF counterparts
- **March 4, 2021:** Virtual meeting with the new MoF team
- **October 10, 2021:** First meeting (virtual) with the Steering Committee
- **December 14, 2021:** Virtual consultation with civil society organizations (CSOs)
- **December 1–16, 2021:** Virtual MAPS preparation mission
- **May 2022:** Second virtual assessment mission
- **August 2022:** Private sector survey
- **October 27, 2022:** Stakeholder Validation Workshop

Source: Assessment Team.

10. **MAPS leadership arrangements** include the Assessment Team and the MAPS assessment Steering Committee (MASC). The Assessment Team consisted of a joint evaluation team with representatives from the government, Bank and ADB. It was composed of a Team Leader, representing the World Bank, who was supported by a World Bank legal expert and international and local consultants. The MASC was created to provide leadership and guidance to the Assessment Team throughout the assessment. It was established in October 2021 under the chairmanship of an MoF official and composed of officials from MoF, National Procurement Commission (*Comissão Nacional de Aprovisionamento*, CNA), Ministry of Public Works (MoPW), Ministry of Health, State Ministry, Ministry of Planning and Land Zoning, including two important players in the infrastructure sector (Major Project Secretariat, [*Secretariado de Grande Projetos*, SGP] and National Development Agency [*Agência de Desenvolvimento Nacional*, ADN]), and the Special Administrative Region of Oecusse Ambeno (*Região Administrativa Especial Oecusse Ambeno*, RAEOA).

11. **The desk review encompassed** legal documents making up the legal and regulatory framework (including the Constitution, codes, laws, decree laws, guidance, and bidding documents) in force on December 31, 2021, and assessments and studies originating from the government, independent sources and development partners related to the Timor-Leste public financial management (PFM), public procurement, governance, public service, and the private sector. The desk review further incorporated various global reports that included Timor-Leste in their reporting such as the World Development Report, Doing Business, Transparency International and Open Budget Survey (OBS). A list of the documents reviewed by the Assessment Team can be found in Volume III of this MAPS Report.

12. **The approach to the assessment of the legal framework.** The MAPS assessment coincided with the process of preparation of a new public procurement law (PPL) intended to update, modernize, and consolidate the existing procurement legal framework. This presented a challenge to the Assessment Team as there was ongoing uncertainty as to both the timescales for introduction of a new PPL and its content. Proposals for a new procurement law had already been floated for some time, at least since 2019 when the World Bank legal team reviewed an earlier draft of a new PPL. In 2021, the legal team working on the MAPS assessment was requested to provide a general assessment on a new draft Decree on Procurement, Public Contracts, and Respective Infringements (May 2021 version) with the objective of identifying high-priority issues to feed into the final process of drafting the new procurement decree. The short report, submitted to the MoF in July 2021, presented priority issues and suggestions for improvement. Some of these were taken on board in PPL 2022. On conclusion of the main activities of the

MAPS assessment of Pillar I in December 2021 it was still unclear if, or when, a new PPL would be adopted, when it would come into force and how and when the critical task of preparing supporting documents and dissemination of a new legal regime would be undertaken. In light of these uncertainties, it was decided to apply the MAPS methodology analysis and assessment to the public procurement legislation in force on December 31, 2021, primarily PPL 2005 (DL 10/2005), Public Contracts Law (DL 11/2005) and Law on Administrative Infractions (DL 12/2005) ('current legal framework').¹⁰ The new government Decree on 'Legal Regime for Procurement, Public Contracts and Respective Infringements' ('PPL 2022')¹¹ was adopted in May 2022 and became effective on 01 January 2023. The Assessment Team wished, however, to acknowledge that PPL 2022 resolves a number of issues identified in the MAPS assessment as substantive gaps in the current legal framework. The Assessment Team did not undertake an exhaustive comparative analysis of PPL 2005 and PPL 2022 but, noted in this Volume I Report and in the analysis in Volume II Matrix following a high-level review, where gaps identified under the current legal framework are resolved or partially resolved or not resolved by PPL 2022. A high-level summary of these conclusions is presented in Annex 10 of Volume III.

13. The approach to data collection and analysis. Efforts have been deployed by the Assessment Team with the government support to collect quantitative information to substantiate the findings related to the operation of the procurement system. The key challenge was the fact that there is no central repository with complete information on the procurement and contract management cycle that would support the generation of a representative sample and calculation of national level indicators. There are partial databases such as the Integrated Financial Management Information System (IFMIS)/procurement module and databases maintained by some public agencies. An additional complexity is the fact that the data on procurement and contract management may be segregated as CNA conducts the procurement under the Infrastructure Fund and large procurement above US\$1 million and maintains records of this 'procurement' information while the line ministries are in charge of 'contract management' and maintain some information in this area. Under these circumstances, three sources of information have been examined MoPW, CNA and IFMIS (procurement module). It was concluded that the data were not sufficient and robust enough to generate all the quantitative indicators recommended under the MAPS methodology, for lack of consistently recording the actual milestones and values from procurement launch to contract completion. This is largely due to a lack of a standard for agencies to record the information by contract, including when procurement actions are segregated from contract management, and to ensure that a set of complete data is maintained, ideally at the project owner level.

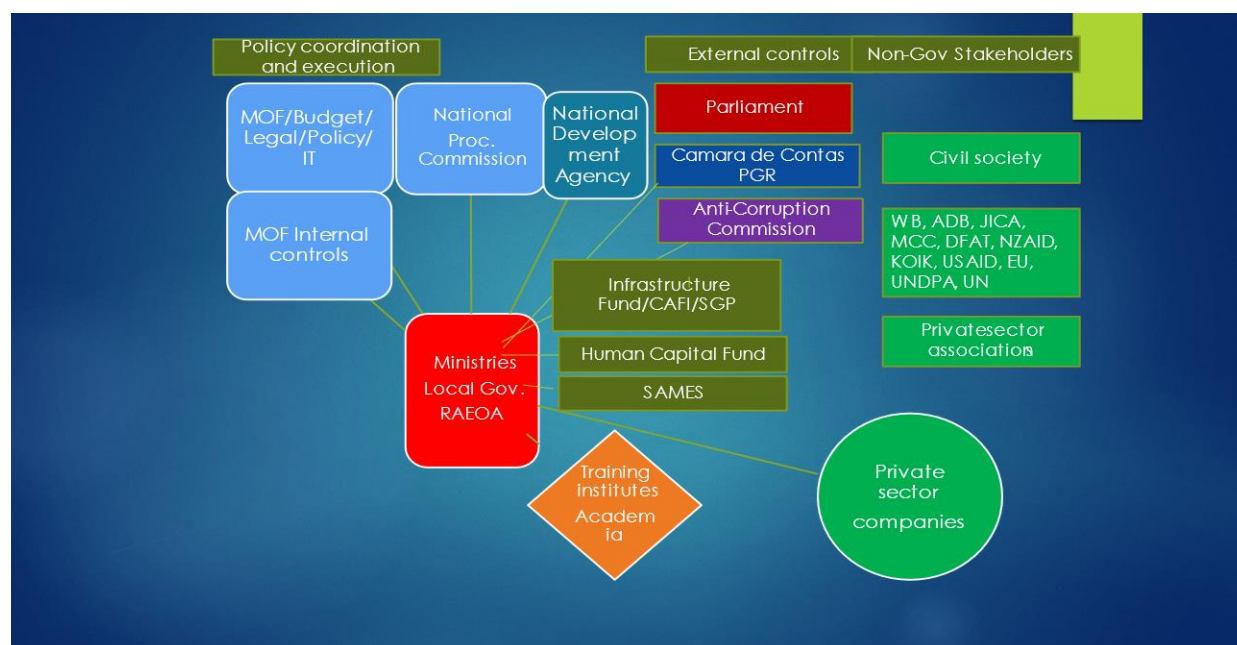
14. Engaging stakeholders both from inside and outside the government, was deemed central to the development of the MAPS assessment to ensure that it incorporates the experience and views of those involved in public procurement. Hence, at an early stage in the planning process, the team conducted a stakeholder mapping and analysis of the actors that are directly or indirectly linked to the procurement agenda in Timor-Leste. The analysis concluded that the institution at the center of the public procurement agenda in Timor-Leste is the MoF which discharges procurement normative, regulatory, and key oversight functions through its various departments (Legal, Internal Control/Audit, Policy, Information Technology) and houses the procurement agency for large contracts, the National Procurement Commission. Other stakeholders include the Infrastructure Fund with its bodies (Major Projects

¹⁰ (Government Decree Law No.10 of 2005, as amended) ("PPL 2005"), Government Decree Law No.11 of 2005 Public Contracts Legal Regime ('DL 11/2005' or 'Public Contracts Law') and Government Decree Law No.12 of 2005 Administrative Infractions of the Procurement Judicial Regime ("DL 12/2005" or 'Law on Administrative Infractions').

¹¹ PPL 2022: Decree Law No.22 of 2022 Legal Regime for Procurement, Public Contracts and Respective Infringements was adopted by the Council of Ministers on May 4, 2022 and published in the Official Gazette (Jornal da República) on May 11, 2022. Jornal da República, May 11, 2022, Series 1, No.19, page 754.

Secretariat [SGP] and Council for Administration of Infrastructure Fund [CAFI]), ADN, procuring entities at the national level including the Drugs and Health Equipment Service (SAMES), and, at the subnational level, Special Administrative Region of Oecusse Ambeno [RAEOA], audit bodies, the integrity agencies, academia and training units, the private sector, CSOs, and international partners engaged in the country. The stakeholders are presented in detail in Volume III of this MAPS Report and are assessed in consideration of their interest and influence in public procurement to determine how best to engage them throughout the process. Key stakeholders are laid out succinctly in Figure 1.

Figure 1: Timor-Leste public procurement stakeholders



Source: Assessment Team.

15. **To capture the private sector perspective as key participants to the public procurement**, the Assessment Team conducted a private sector survey that collected information from 14 respondents (see MAPS Volume III) and met with the Chamber of Commerce, the private sector umbrella association. Additional useful information was extracted from the 2021 Enterprise Surveys.¹²

16. **Limitations and challenges in the preparation of this MAPS.** The progress of the assessment activities was affected by the following:

- The COVID-19 situation and the related limitations on interaction with the assessment stakeholders resulted in delays in data collection for the pillars and MAPS indicators. Most of the interviews were conducted virtually and the internet connection did not always allow for smooth communication.
- Other events related to prolonged delays in the passage of the 2020 budget, record floods in the first semester of 2021, and a second COVID-19 wave further delayed the completion of some of government commitments under the MAPS Project.

¹² World Bank Enterprise Surveys, Timor-Leste 2021 Country Profile

- An additional challenge was the fact that the MAPS assessment took place in a fluid legal situation as a new consolidated PPL was under preparation to replace the current procurement legal framework. The Assessment Team approach in addressing this challenge is described in paragraph 12.
- Finally, there is a complex-linguistic environment in Timor-Leste with Portuguese and Tetum coexisting with English and Bahasa Indonesia, which affects the communication with counterparts and the availability of documents in the language of the report. The translation of some legal documents including the new PPL 2022, was not available in English while some documents (for example, annual reports of various agencies) were available only in Tetum. Machine-based translations were used for documents other than those in Tetum.

17. **The MAPS recommendations¹³ are captured in a prioritized Action Plan** that will inform the public procurement agenda in Timor-Leste and will be disseminated through a stakeholder workshop to secure broad support for its implementation. The Action Plan includes recommendations regarding the approach to strengthening the legal and regulatory framework in the country, improving institutional clarity and coordination, developing performance monitoring mechanisms, launching the e-procurement agenda, creating a critical mass of procurement cadre, building private sector capacity to effectively participate in the public procurement market and strengthening transparency and integrity in procurement. The Action Plan will be the subject of a discussion within the government and with the development partners in 2023 to identify areas of future support and engagement according to their interests and resources.

¹³ Consolidated in Volume I: Main Report/Chapter 4.

2. Analysis of Country Context

2.1. Political, Economic, and Geostrategic Situation of the Country¹⁴

18. **Timor-Leste is the newest country in Asia and the world's second youngest nation.** Its population is also young (about 60 percent are under the age of 25) which puts pressure on the job market while poverty levels are among the highest in the region. Despite the significant progress made in key areas in the past 15 years, Timor-Leste remains fragile as it contends with legacies of past conflict. This fragility is evidenced by weak institutional capacity and governance, poor social cohesion, lagging human capital indicators, corruption, and inadequate infrastructure. Timor-Leste still struggles with insufficient technical and managerial capacity in the public service and the wider economy, policy ambiguity and inconsistency, weak public finance management and sectoral regulation, and lack of clear laws on the ownership and use of economic assets, such as land and financial credit.

Figure 1: Timor-Leste map



Source: RB-DEASKKART www.welt-atlas.com

19. **Economic outlook.** Oil and gas continue to play a dominant role in Timor-Leste's economy. Since 2004, the exploitation of offshore oil and gas reserves has dominated overall the economic activity. The absorption of oil rents into the economy has occurred mainly through considerable increases in public spending, particularly on infrastructure, public sector wages, and cash transfers.¹⁵ The World Bank Economic Report of December 2021, points to the onslaught of both domestic and external shocks, starting with the 2019 pandemic, that caused the Timor-Leste's economic outlook to turn significantly weaker. In 2020, the economy suffered the largest contraction since independence (2002), but it is projected to recover over 2021–2022 on account of low base effect, COVID-19 related fiscal expansion, cyclone-related reconstruction and less restrictive public health measures. On the demand side, a gradual rebound in private consumption, supported by public sector wages and personal benefit transfer, was expected to drive economic growth in 2022. Private investment is likely to remain low. Global trade is expected to pick up further, positively affecting both exports and imports. Nevertheless, net exports will continue to be a drag on growth due to structural external sector imbalances (that is, lack of diversified exports and high import demand).¹⁶ It is notable that, with Timor-Leste being an import dependent country, efforts are being made with the support of the development partners to

¹⁴ Country context information is drawn mostly from the World Bank Country Partnership Framework for the Democratic Republic of Timor-Leste for the period FY 2020-FY2024 (CPF) and World Bank Timor-Leste Economic Reports (2020, 2021 and 2022).

¹⁵ World Bank CPF for the period 2020-2024

¹⁶ World Bank Timor-Leste economic report, December 2021.

(e.g., ADB, IFC, USAID) to promote activities that support customs and trade facilitation. Since 2013, IFC has supported efforts to streamline customs clearance at the Dili Port with significant results. In 2013, it took 15 days to clear customs, while in 2018 it took only 6 days¹⁷.

20. COVID-19 and the 2021 cyclone impact on the economic downturn underscored the importance of procurement in addressing such crises: Following the first confirmed case of COVID-19 in March 2020, the President of Timor-Leste declared a state of emergency. Exceptional procurement procedures were enacted to facilitate the swift purchase and distribution of vaccines and medical supplies. At the same time, the government expenditures have increased constantly with the revised 2022 State Budget amounting to US\$2.4 billion (nearly double of non-oil GDP), the largest budget in the country's history, accelerating the depletion of the Petroleum Fund in less than a decade.¹⁸ In this context, the efficient use of resources including through public procurement becomes even more important. Such events also bring to the fore the role procurement could play through appropriate readiness mechanisms in building the country preparedness for prospective pandemics and natural disasters.

Table 2: Country profile: Key statistics

Series name	2018	2019	2020
GDP (current LCU) - thou.	1,583,876	2,047,932	1,902,157
GDP per capita (constant LCU)	1251	1467	1588
General government final consumption expenditure (annual % growth)	-0.28	3.16	4.85
Imports of goods and services (% of GDP)	59.54	54.63	94.22
Trade (% of GDP)	62.42	82.37	162.96
Imports of goods and services (annual % growth)	2.91	21.31	67.14
Surface area (km ²)	14,870	—	—
CPIA building human resources rating (1=low to 6=high)	3	3	3
CPIA financial sector rating (1=low to 6=high)	2.5	2.5	2.5
CPIA gender equality rating (1=low to 6=high)	3.5	3.5	3.5
CPIA policies for social inclusion/equity cluster average (1=low to 6=high)	2.9	2.9	2.9
CPIA property rights and rule-based governance rating (1=low to 6=high)	2	2	2
CPIA quality of budgetary and financial management rating (1=low to 6=high)	3	3	3
CPIA business regulatory environment rating (1=low to 6=high)	2	2	2
CPIA policy and institutions for environmental sustainability rating (1=low to 6=high)	2	2	2
CPIA quality of public administration rating (1=low to 6=high)	2	2	2
CPIA transparency, accountability, and corruption in the public sector rating (1=low to 6=high)	2.5	3	3
Mobile cellular subscriptions (per 100 people)	116	110	105
Net ODA received (% of GNI)	9.17	8.64	—
Net ODA received (constant 2018 though US\$)	207,650	240,230	—
Secure internet servers	37	49	119
Human Capital Index (HCI) (scale 0-1)	0.45	—	0.45

Source: World Development Indicators - WDI - updated April 27, 2022.

Note: CPIA = Country Policy and Institutional Assessment; GNI = Gross national income; LCU = Local currency unit; ODA = Official development assistance.

21. Timor-Leste has adopted a multiparty democracy system. Timor-Leste operates a unitary semi-presidential system of government, with functioning National Parliament. The Prime Minister is the Head

¹⁷ World Bank CPF for the period FY 2020-2024

¹⁸ World Bank Economic Report for Timor Leste June 2022

of government, while the President is the Head of State. The judiciary is independent. Timor-Leste has successfully organized four multiparty elections since independence. Although the country has eight political parties that have coalesced at various times to form governments, two major political parties are dominant (that is, Alliance for Change and Progress and Revolutionary Front of Independent East-Timor-Fretilin).¹⁹ After a period of political instability which led to Parliamentary elections in both 2017 and 2018 and delayed budget approval in 2020 the country is now heading toward the 2023 Parliamentary elections.

22. International partnerships: Timor-Leste is not currently a party to regional or bilateral free trade agreements and so there are no public procurement-specific obligations deriving from those sources. Timor-Leste has the Association of Southeast Asian Nations (ASEAN) observer status since 2002 and applied in March 2011 to become a member of ASEAN, and reforms are currently under way in Timor-Leste's fiscal and economic systems to bring the country into compliance with ASEAN standards (for example, the Timor-Leste ASEAN Mobilization Plan [TLAMP] aims to bring all the relevant line ministries into compliance with ASEAN economic best practices). Timor-Leste served as President of the Community of Portuguese Language Countries (CPLP) from 2014 to 2016 and is also part of Macau Economic Forum (between China and CPLP). Timor-Leste is also pursuing trilateral economic cooperation with Indonesia and Australia to boost cross-country investment and exploring membership in the Commonwealth. Finally, Timor-Leste was accepted as an observer to the World Trade Organization (WTO) in 2016. Participation in WTO Government Procurement Agreement is unlikely to be in play in the near future.

2.2. The Public Procurement System and Its Links with PFM and Public Governance Systems

Public procurement in the broader PFM framework

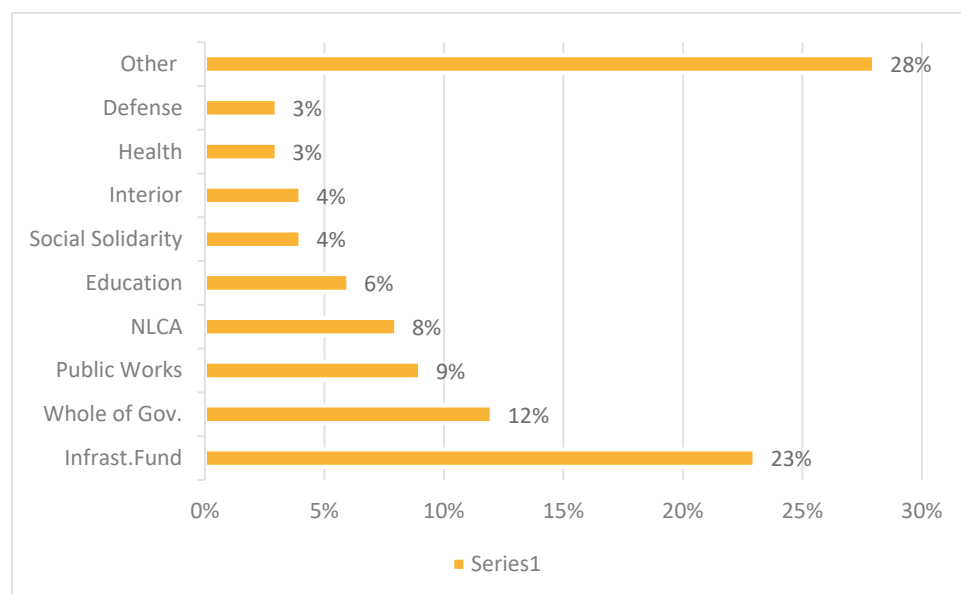
23. PFM reform and the fiscal decentralization agenda. PFM is an important part of the government's Strategic Development Plan (SDP) 2011–2030 aiming to improve the efficiency of public spending, especially in the current context of decentralization of PFM roles and responsibilities to ministries, public autonomous institutions, municipalities, and villages. The last PEFA 2018 assessment noted that although reforms have gradually progressed, overall performance has stalled and even deteriorated in specific areas. One of these areas is procurement management dimension (PI-24) that scored a 'D' (on a scale of A–D), slightly lower than D+ in PEFA 2013. A comprehensive, country owned, and country-led PFM reform action plan is under implementation to address the bottlenecks identified and improve PFM performance. Significant gaps in public procurement identified by PEFA are, among others, insufficient publicity of procurement information, lack of up-to-date statistics on public procurement to enable performance monitoring and the absence of a streamlined independent review process of appeals. Most of these deficiencies persisted at the time of the MAPS assessment.

24. Nature and scope of public procurement. Public procurement covers procurement of goods, works, and services, including consulting service, financed from government funds. The public sector has traditionally dominated the economy, partly because the private sector is underdeveloped. The public expenditures in Timor-Leste, relative to the GDP, are among the highest in the world. As a result, a significant share of public funds is channeled through public procurement – while there are no official data, a rough estimate of the procurable expenditures by the Assessment Team shows that procurement

¹⁹ World Bank CPF for FY 2020-FY 2024

accounts for about 40 percent of GDP and more than 60 percent of the public expenditures,²⁰ which is high when compared with global averages. Government expenditures in 2019, including those that are spent through public procurement are mostly allocated to the infrastructure sector (Figure 3). Infrastructure Fund and Public Works account for 32 percent of GDP, while social ministries (for example, Education, Health and Social Solidarity) account for 13 percent. Whole of government includes transfers (for example, RAEOA-ZEESM²¹) and National Liberation of Combatants Affairs (NLCA) comprises veteran pensions. While the 2021 budget increased its allocation to the social sectors in the wake of COVID-19 pandemic, infrastructure spending continues to be significant. This budget allocation among various government entities has informed the selection of the procuring entities for the data collection.

Figure 3: Government expenditures (% of GDP, 2019)



Source: World Bank Macroeconomics, Poverty and Governance in Timor-Leste Presentation June 2020.

25. Given the dominance of the public spending, its efficient use is paramount to the achievement of the government development goals. The rate of budget execution in 2019 was 84 percent the lowest since 2013 partly due to low execution of the capital and development budget (73 percent) and goods and services budget, (also less than 80 percent). The downward trend continued in 2020 and 2021. These rates underscore key difficulties in planning (for example, anticipate needs), budgeting (for example, estimate costs), and execution (for example, procuring).²² The impact of public expenditures also seems to be declining. Figure 4 illustrates the downward trend of the fiscal multiplier,²³ which suggests a decrease in the impact of public spending. Improving the quality of public spending (including public investment management PIM/procurement) is key to reversing this trend.

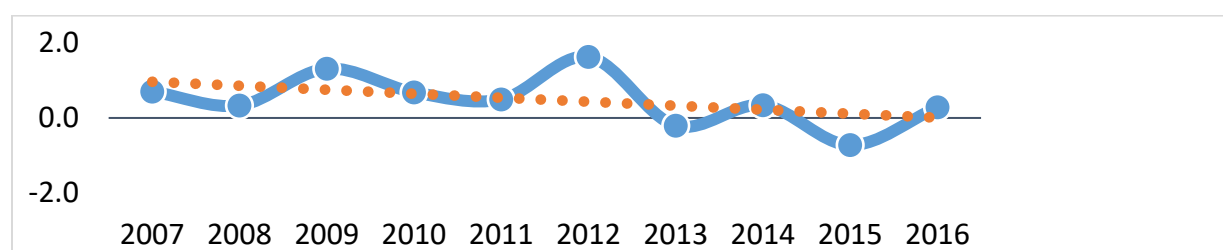
²⁰ Estimate over 2018–2021 using the following coefficients: 100 percent capital (development and minor), 90 percent goods and services, 40 percent transfers (to exclude loan service payments and personal benefits). Source: Expenditure category, Transparency Portal.

²¹ Special Administrative Region of Oecusse Ambeno (*Região Administrativa Especial Oecusse Ambeno*)-Special Zone of Social Market Economy (*Zonas Especiais de Economia Social de Mercado de Timor-Leste*).

²² World Bank 2020 Timor-Leste Economic Report

²³ Fiscal multiplier shows additional economic activity per one dollar of public spending.

Figure 4: Fiscal multiplier



Source: World Bank Macroeconomics, Poverty and Governance in Timor-Leste June 2020.

26. **Concessional finance:** The government outlines its policy²⁴ in this area underscoring that the main source of multilateral financing is international financial institutions (IFIs) such as the World Bank and ADB. These resources are still predominantly channeled to the national road development sector. However, in accordance with the government program, efforts have been made to diversify and expand concessional sovereign borrowing into other key sectors with high social benefits. These include water supply and sanitation service, expansion of Dili International Airport, education, and energy. It is expected that they would help unleash the growth potential of other key economic activities, leading to inclusive economic growth and poverty reduction. The government proposed for 2022 an estimated ceiling of US\$410 million for new concessional foreign loans.

27. **ODA to Timor-Leste.** Consistent with Budget Book 1 for the 2022 state budget, the amount of ODA to Timor-Leste exceeded US\$150 million from 2016 onward. To promote transparency in the use of the external aid and strengthen the country systems, the government adopted the External Aid Effectiveness Management Policy that defines how international development support should be provided to Timor-Leste, ensuring ownership, alignment with government programs and promotion of accountability. The planned disbursements by the donor group shows the Government of Australia contributing 33 percent, United Nations 15 percent, Portugal 11 percent and Japan 8 percent, EU 6 percent, among others.

28. **Timor-Leste has adopted PPPs** as a modality for project implementation and used it over the last eight years. It started out by establishing a PPP policy and legislation.²⁵ A dedicated PPP unit was established under the Directorate General for External Resource Mobilization and Management in the MoF for facilitating, managing, and implementing the PPP project cycle in coordination with line ministries and under oversight of the Council for Administration of Infrastructure Fund (CAFI). It also has the function of attracting foreign direct investment (FDI) through PPP operations. Currently, one PPP project is in the implementation and operation stage (Tibar Bay Port PPP) and one in the procurement and negotiation stage (Medical Diagnostics) while others in the feasibility stage (Affordable Housing, Cristo Rei, and Presidente Nicolau Lobato International Airport). While PPP is not governed by the public procurement regime and is not the subject of detailed analysis according to the core MAPS methodology, the assessment contains, under Pillar I, information on the soundness of the procurement principles applicable for PPP operations.

²⁴ Budget Book 2, 2022, p. 15

²⁵ Decree Law No.42 of 2012 Legal Regime for Public Private Partnerships [Regime Jurídico das Parcerias Público-Privadas], as amended.

Timor-Leste Governance environment

29. **Governance framework.** The government efforts to strengthen governance and clamp down on corruption are part of the SDP 2011–2030 and have been recognized by Transparency International as Timor-Leste advanced 4 points on the Corruption Perception Index to 42 in 2022 from 38 in 2019 (see Figure 5). The government has signaled its commitment to fighting corruption, most notably by ratifying the United Nations Convention against Corruption (UNCAC) agreement in 2008, creating the Anti-Corruption Commission, (*Comissão anti-corupção*, CAC)²⁶ in 2009 and enacting relevant legislation. Thus, a recent development that constitutes an important step ahead was made through the adoption of the Law of National Parliament No.7 of 2020 'Measures to prevent and combat corruption'- *Medidas de prevenção e combate à corrupção* (anti-corruption law), which came into force on February 22, 2021. The law defines offenses by the private and public sector actors that are relevant to their participation in public procurement. Furthermore, the anti-corruption law obliges individuals holding public and municipal positions, managers and civil servants of specific public bodies, including those who are granted functions in public procurement to file declarations of income, assets and interests and mandates CAC to monitor its enforcement and publish statistics on compliance and sanctions applied. The anti-corruption law also emphasizes the importance of publicity and transparency in procurement and the need for procurement procedures to promote value for money. Other mechanisms provided in the anti-corruption law that are highly relevant for identifying integrity risks in procurement operations are declaration of beneficial ownership, conflict-of-interest self-declaration, and whistle-blower protection. Finally, the anti-corruption law mandates a cooling-off period for public officials forbidding public officials, for two-years after the end of their term, to exercise any activity in the private sector in areas directly related to their former public position.

Figure 5: Timor-Leste CPI – 2022



Source: Transparency International.

30. **Timor-Leste has established an institutional framework for more transparent and accountable governance.** This includes CAC established in 2009 with a mandate to prevent and investigate corruption, the Office of the Ombudsman for Human Rights, and the Civil Service Commission (*Comissão da Função Pública*, CFP) established in 2009 to promote integrity in public sector. Other oversight institutions include the Parliamentary Commission A and Commission C focusing on promoting public sector ethics and

²⁶ Decree Law No. 8 of 2009 Law on the Anti-Corruption Commission [Lei Sobre a Comissão Anti-Corrupção].

enforcing oversight of budget and public financial management respectively, the Inspector General's office, the Prosecutor General's office, the Court of Appeal and Audit. Timor-Leste was also one of the pioneer countries that invested in promoting government transparency. It established a Budget Transparency Portal which presents information on budgets and expenditures (from 2002 onwards), the Aid Transparency Portal, the government Results Portal, and in the area of public procurement, the 'Electronic Procurement Portal' (procurement portal).

31. In spite of the progress, challenges remain as most of these anti-corruption mechanisms are still to be effectively enforced. As underscored by the World Bank CPF for Timor-Leste FY2020-FY2024, despite the government's anti-corruption efforts, corruption, nepotism and cronyism seem to be pervasive in the public sector. It further states that the Parliamentary structure which makes Members of Parliament (MPs) accountable to their party leaders, instead of the voters, undermines constituency representation, civic participation, and opportunities for holding elected officials accountable.

2.3. National Policy Objectives and Sustainable Development Goals

32. Government objectives are aligned to the United Nations (UN) 2030 Sustainable Development Goals (SDG) and public procurement is used as a tool in their achievement. According to the SDP 2011–2030 the country embarked on a process of economic, social, and political development aiming to develop a prosperous and strong upper middle-income nation by 2030. The SDP covers three key areas: social capital, infrastructure development and economic development. These strategic objectives were reinforced by the VIII Constitutional Government Program²⁷ that incorporates a roadmap toward Timor-Leste's compliance with the '2030 Sustainable Development Agenda of the United Nations'. It emphasizes the three abovementioned overarching objectives adding a separate cross-cutting dimension, that is, 'governance and anti-corruption'. Procurement transformation is needed to attain optimal outcomes in the identified areas, for instance: (a) strengthening human capital requires significant investment in education and health supported by effective procurement; (b) developing infrastructure, creating jobs, and building local private sector require improved procurement policy and advisory services at the decentralized level; (c) governmental consolidation entails building strong institutions and making meaningful changes in public procurement by enacting a new PPL and promoting transparency through e-procurement; and (d) the anti-corruption agenda has a strong procurement component and preventing and combating corruption in this area is one of the CAC priorities.

33. The government needs to direct its financial wealth resulting from the oil revenues to investments to support sustained and broad-based economic growth, as underscored by the World Bank CPF. It is further noted that this task requires a more strategic allocation of public resources and raising the quality of public investments. These objectives require a strong PIM. In this context, efficient, effective, transparent, fair procurement is an important avenue to achieve broad based economic, social and environmental goals through green procurement, gender responsive procurement, job creation and the private sector including small and medium enterprise (SME) development. To this end, the government has formulated legal procurement requirements in support of the SDG agenda. Going further, the country needs a "Sustainable Procurement Strategy" to identify the optimal approaches for a balanced and effective application of procurement and a performance evaluation tool with a feedback mechanism for its continuous enhancement.

²⁷ <http://timor-leste.gov.tl/?cat=39&lang=en>

2.4. Public Procurement Reform

34. **After independence,²⁸ PFM reform has been an important component of the new government agenda** to improve efficiency of public spending, especially in the context of decentralization of PFM roles and responsibilities to ministries, public autonomous institutions, municipalities, and villages. The dialogue on public procurement between the government and the development partners started in early 2000 and materialized in the 2003 CPAR.²⁹ The CPAR made a series of recommendations to reinforce the legal and regulatory framework, build capacity, strengthen the institutional arrangements, and start procurement decentralization while maintaining the procurement of recurrent expenditures centralized.

35. **Reforms in public procurement were undertaken after the 2003 CPAR** when a new legal and institutional framework was set in place. The public procurement legal regime is set out in a collection of government decree laws. Government Decree Law No.10 of 2005, as amended (“PPL 2005”)³⁰ contains the framework for the procurement regime in the country. It establishes the principles of public procurement and defines the responsibilities of the entities that have the power to authorize the procurement process based on specific procurement thresholds. Nine decree laws complement PPL 2005, including decree laws on administrative infractions (debarment)³¹ and the public contracts legal regime.³² There have been seven amendments to PPL 2005, but a consolidated version of PPL 2005 with all changes has not been developed. It was also noted that there are no implementing regulations as required in the law and other supporting guidance to practitioners did not yield the expected results to support effective enforcement: (a) the 10 Best Practice Guides that were issued are outdated and not fully aligned with the legislation; and (b) all the guides and examples of bidding documents published are in English that is not an official and/or working language of the country and the level of English literacy in Timor-Leste is low.

36. A new PPL³³ (‘PPL 2022’) was adopted in 2022 and came into force on January 1, 2023. PPL 2022 consolidates and updates the current fragmented legal framework with the objective of creating a clearer, simpler, objective, rigorous and transparent procurement to promote the country's economic and social development. While it does not resolve all the gaps identified in the current legal framework, it introduces key improvements based on experience gained, international practice and technological advances. Notably, it enables e-procurement transactions and assigns additional competences to CNA including the standardization of procedures across the country and capacity building of the procurement workforce.

37. **An institutional framework for public procurement was developed.** The MoF is the ‘apex’ agency as it is charged with the normative and regulatory function for public procurement; CNA, a state administration within the MoF, was established to carry out procurement for large contracts (above US\$ 1 million) but also support decentralized units upon request including providing advisory services. ADN was created in 2015 as a technical arm of the government procurement function reviewing feasibility studies, detailed designs and having a technical supervisory role particularly in relation to payments. In 2020 ADN

²⁸ On August 30, 1999, in an UN-sponsored referendum, an overwhelming majority of East Timorese voted for independence from Indonesia. Following a UN-administered transition period, East Timor was internationally recognized as an independent nation on May 20, 2002.

²⁹ Timor-Leste Country Procurement Assessment Report – A Joint Document of The government of Timor-Leste, The Asian Development Bank and The World Bank (May 23, 2003).

³⁰ PPL 2005: Decree Law No.10 of 2005 Public Procurement Regime, as amended by Decree Laws No.14 of 2006, No.24 of 2008, No.1 of 2010, No.15 of 2011, No.38 of 2011 and No.30 of 2019 and No.5 of 2021.

³¹ Decree Law No.12 of 2005 Administrative Infractions of the Procurement Judicial Regime.

³² Decree Law No.11 of 2005 Public Contracts Legal Regime

³³ PPL 2022: Decree Law No.22 of 2022 Legal Regime for Procurement, Public Contracts and Respective Infringements” was adopted by the CoM on May 4, 2022 and published in the Official Gazette (Jornal da República) on May 11, 2022.

was established as an autonomous institution. Other key players are the Infrastructure Fund, including SGP, that was created to support the effective implementation of the government infrastructure program and the Human Capital Fund charged with the human capital development. Procuring entities are established at the national, regional, and municipal levels. Key ministries that are significant players in the procurement market are MoPW, the State Ministry that coordinates the local government procurement, the Ministry of Health, and SAMEs (specialist procurement body) for health procurement. At the regional level RAEOA, is a key procurer. Procurement authority was gradually decentralized giving authority to procuring agencies at the budgetary unit level except for large contracts that are handled centrally by CNA.

38. Given the many agencies/units that play a role in public procurement with the normative/regulatory responsibilities dispersed among various MoF departments and other agencies, there is a risk of overlapping functions and a 'silo' effect with no coordinating mechanism to forge a holistic perspective on the policy, performance and operation of procurement systems that would support a harmonized, cohesive national strategy for its development.

39. **An online procurement portal was established in the Government Resource Planning (GRP) system.** Its aim is to provide a centralized platform for procuring agencies to publish tender notices and contract award information, and to serve as a repository of procurement and contract data. The procurement portal publicizes laws comprising the procurement legal framework, sample bidding documents, procurement opportunities and awards. However, there is no national comprehensive and reliable database for public procurement in Timor-Leste. The portal is incomplete and is yet to become a national centralized portal incorporating all procurement and contract management transactions to enable policy makers, managers and outside parties to effectively monitor procurement results and performance. The PPL 2022 mandates the publication of all competitive tenders in the portal, and hence it is expected that in the future, the information collected and published will be more comprehensive.

40. **The e-procurement agenda** for the development of an end-to end e procurement system, has not been launched yet but is now enabled in the context of the new PPL. Thus, the PPL 2022 provides for the development of e-procurement solutions, acknowledging existing constraints and allowing for the use of electronic procurement as practical conditions permit.

41. **The most recent assessment that captures public procurement, that is, the 2018 PEFA,** emphasized the need to strengthen the Timor-Leste public procurement system and address the challenges that have an adverse impact on the quality and performance of public procurement and, as a result, on the effective use of public funds. They include weak enforcement of the legal and regulatory framework, weak capacity, lack of an independent appeal mechanism and lack of an effective public procurement performance and monitoring system. Some of these shortcomings are identified by the government in its five-year program with remedial actions as further described.

42. **The current government acknowledges in its five-year program**³⁴ that improving public procurement is essential to reaching the government economic and social goals and has identified a few public procurement priorities that support its higher-level development objectives. They include building capacity (including of CNA, SGP, ADN) and improving procurement management to support the post-COVID recovery; revising the procurement law to ensure the public procurement process at the national, regional, and municipal levels is carried out effectively, transparently, without discrimination and facilitates the development of the national private sector; and continuing to develop the online

³⁴ Program of the eight Constitutional Government for the 2018–2023 Legislature <http://timor-leste.gov.tl/?cat=39&lang=en#prog5.3>. 5

procurement portal to promote transparency and citizens participation. Other government priorities that have a strong procurement component include strengthening oversight and promoting transparency and accountability in the management of public expenditures.

43. To implement this ambitious agenda, the government will be supported by this MAPS whose evidence-based recommendations will inform the government reforms in public procurement. Such reforms can benefit from the momentum created by this MAPS, the adoption of a new PPL, and the government's increased awareness of the importance of public procurement for the efficient use of funds, private sector development and effective delivery of services to citizens in both normal and crisis situations. This momentum should be sustained, however, by a strong leadership, interinstitutional cooperation, and constant stakeholders' demand for a public procurement that is efficient, transparent, and free of corruption.

44. The detailed assessment is contained in the following chapters organized along the four MAPS Pillars: (I) Legal, Regulatory and Policy Framework, (II) Institutional Framework and Management Capacity, (III) Procurement Operations and Market Practices, and (IV) Accountability, Integrity, and Transparency of the Public Procurement System.

3. Assessment

3.1. Pillar I - Legal, Regulatory and Policy Framework

45. The analysis under Pillar I was prepared in 2020/2021 and is based on review and assessment of the public procurement legislation in force on December 31, 2021 ('current legal framework'). This includes government Decree Law No.10 of 2005, as amended ('PPL 2005'),³⁵ government Decree Law No.11 of 2005 Public Contracts Legal Regime ("DL 11/2005" or 'Public Contracts Law'), government Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime ('DL 12/2005' or 'Law on Administrative Infractions')³⁶, standard procurement documents and Best Practice Guides, published on the MoF procurement webpage.^{37 38}

46. During the undertaking of the assessment a new consolidated PPL, government Decree on 'Legal Regime for Procurement, Public Contracts and Respective Infringements' ('PPL 2022') was adopted by the CoM on May 4, 2022 and published in the Official Gazette (*Jornal da República*) on May 11, 2022.³⁹ When PPL 2022 came into force, on January 1, 2023, it revoked the following laws (as amended): PPL 2005, DL 11/2005 Public Contracts Law, DL 12/2005 Law on Administrative Infractions. PPL 2022 consolidates legal regimes previously contained in separate decree laws on public procurement, public contracts, and infringements. It also removes the special procurement regimes for procurement of drugs and health equipment and for procurement of services in RAEOA, bringing these procurements regimes within the coverage of PPL 2022⁴⁰. The report and assessment do not provide an exhaustive analysis of PPL 2022. The MAPS assessment, however, recognizes that when PPL 2022 comes into force in 2023 it will address and resolve a number of issues identified as substantive gaps in the current legal framework. These positive developments in respect of gaps identified under the current legal framework are noted in this Volume I of the report and in the analysis in Volume II Matrix together with comments, where relevant, when an identified gap has not been resolved in PPL 2022. A list of laws and other documents consulted for the legal analysis in this assessment report is included in Volume III, Appendix 1A.

³⁵ PPL 2005: Decree Law No.10 of 2005, as amended by the following Decree Laws: No.14 of 2006, No.24 of 2008, No.1 of 2010, No.15 of 2011, No.38 of 2011 and No.30 of 2019 and No.5 of 2021. A consolidated version, showing all amendments made to the PPL 2005 is not available from the Ministry of Finance website.

³⁶ Other procurement legislation published on MoF website: Decree Law No.11 of 2005 Public contracts legal regime, Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime, Decree Law No.29 of 2009 Priority projects, Decree Law No.2 of 2010 Special procurement procedures for awarding construction work up to US\$250,000 to local companies located in sub-districts, Decree Law No.11 of 2011 National Development Agency (*Agência de Desenvolvimento Nacional*) ("ADN"), Decree Law No.14 of 2011 Establishing the National Procurement Commission (*Comissão Nacional de Aprovisionamento*) ("CNA") (and revoking Decree Law No.3 of 2010).

³⁷ Standard procurement documents:

<https://www.mof.gov.tl/government-procurement/procurement-documents-templates/?lang=en> Accessed December 14, 2020, checked January 7, 2022.

Updated link May 1, 2022: <https://www.mof.gov.tl/procurementpage>

³⁸ Good Practice Guides:

<https://www.mof.gov.tl/government-procurement/guide-to-government-procurement/?lang=en> Accessed December 2, 2020, checked January 7, 2022. Updated link May 1, 2022: <https://www.mof.gov.tl/procurementpage>

³⁹ PPL 2022: Decree Law No.22 of 2022 Legal Regime for Procurement, Public Contracts and Respective Infringements" was adopted by the CoM on May 4, 2022 and published in the Official Gazette (*Jornal da República*) on May 11, 2022. *Jornal da República*, 11 May 2022, Series 1, No.19, page 754.

⁴⁰ PPL 2022 revokes: Decree Law No.2 of 2009 Special regime for Drugs and health equipment procurement (SAMES) and A.2(1), A.2(2) and A.3 Decree Law No.28 of 2014

Summary of Pillar I

47. This summary for Pillar I presents an overview of the analysis discussed in this chapter. The analysis is drawn from further detailed information in the Indicator Matrix at Volume II.

48. The procurement legal framework is organized hierarchically with precedence clearly established, it covers goods, works, services and consulting services for all procurement using public funds and procurement of PPPs is regulated. The collection of legal framework documents available from the MoF website is incomplete, out of date and not available in a user-friendly format.

49. A range of procurement methods are clearly established, with preference given to use of the open tendering procedure for higher value contracts and conditions for use of each method are specified. Procurement opportunities for competitive bidding must be publicly advertised. Information to be included in the public advertisement is listed but does not include a description of the subject matter of the contract. There are general principles on the calculation of deadlines for submission of tenders, although minimum timescales are not specified. PPL 2005 sets out principles of legality and equality including a general requirement that conditions for access and participation are the same for all interested parties. PPL 2005 lists essential qualification requirements and grounds for disqualification and details the procedures to be used to determine the bidders' eligibility and ability to perform a specific contract. Offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed as grounds for exclusion/disqualification. There is a process provided for in the legal framework for administrative debarment, including a right of hierarchical appeal against a debarment decision. There is no evidence of the operation of administrative debarment in practice.

50. The minimum content of procurement documents including instructions for bidders, qualification requirements, and description of the subject matter of the contract is defined in the legal framework. There is a clear process for bidders wishing to clarify procurement documents. PPL 2005 does not specifically refer to the use of neutral specifications and citation of international norms or for use of functional specifications and acceptance of equivalent standards.

51. Objective evaluation criteria, together with the evaluation methodology, must be specified and disclosed in advance in the procurement documents and are the basis for the award decision. Use of price and non-price attributes including quality and life-cycle costing is permitted. PPL 2005 does not, however, require that procurement documents state the relative weights allocated to the criteria and the Best Practice Guide states that disclosure of the importance scores (or weightings) is not mandatory. While there is a general principle of confidentiality, PPL 2005 does not have provisions protecting specific sensitive information. Tenders are opened at a public ceremony on dates and in a manner specified in the tender documents, but PPL 2005 does not state that the opening of tenders takes place immediately following the closing date for bid submission.

52. PPL 2005 ensures the right for participants in procurement proceedings to make a complaint (that is, challenge) in respect of decisions or actions taken by the public service (procuring entity) on specified grounds, with timescales specified for both submission and decision on a complaint. There is no specialist independent administrative appeal/review entity. PPL 2005 includes provisions for appeals against decision on complaints to be pursued through hierarchical appeal. This is not a public process and is conducted by competent bodies which cannot be guaranteed independent of the procuring entity. No

data are available on the conduct of/ and decision making in hierarchical review. There is no specific provision in PPL 2005 establishing a right for judicial review of a decision made in hierarchical appeal, but the general right of judicial review is available.

53. The legal framework and guidance include provisions on functions and responsibilities in the context of contract management but lacks detailed provisions on some matters required to ensure complete and timely contract implementation, such as monitoring and supervision of contract delivery and monitoring contract performance clauses. There are efficient and fair processes to resolve disputes, with final outcomes being enforceable. There are clear requirements to maintain records of bid opening and make them available for inspection, but it is unclear whether there are procurement-specific security protocols for document retention. There is a misalignment between the limitation periods in the Penal Code for prosecution of fraud and corruption, which may be up to 20 years, and the statutory 10-year retention period for maintenance of records of budget operations, including procurement records.

54. Specialized legislation is in place for procurement of drugs and health equipment and for procurement of construction works up to US\$ 500,000 under district integrated development planning (*Planeamento de Desenvolvimento Integrado Distrital*, PDID), subject to established procurement principles. There is a dedicated PPP law and responsibilities for development and support of PPPs are clearly allocated. There are no provisions in PPL 2005 or other public procurement related decree laws establishing rules for participation of SOEs as bidders, which promote fair competition and create a level playing field for all competitors. It is unclear whether or to what extent PPL 2005 or public procurement principles (for example, competitive procedures, transparency fairness, value for money decisions) apply to procurement by all state enterprises across the spectrum of public service delivery.

55. There is no e-procurement system. PPL 2005 does not allow or mandate use of e-procurement solutions covering the public procurement cycle, whether entirely or partially. There are no regulations issued by the MoF to supplement and detail the provisions of the procurement, although these are envisaged in the procurement-related decree laws. There are 'standard procurement documents', available to the public in English only, for goods and services, medium works and consultancy services but not for more specialized procurement. They are, for the most part, sample documents with project-specific information inserted rather than a full set of standardized templates for completion by users. There are standard contract conditions for most common types of contracts, use of which is mandatory. There is a set of Best Practice Guides which cover the process for correct implementation of the procurement legal framework, but these are available only in English and do not appear to be updated regularly.

56. Timor-Leste does not have a specific policy or strategy to implement sustainable public procurement (SPP) in support of national policy objectives nor a related implementation plan. PPL 2005 does not contain comprehensive measures allowing for all aspects of sustainability (economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle or to ensure balanced application of sustainability criteria for all aspects of sustainability and value for money. Timor-Leste has ratified a number of International Labor Organization (ILO) Conventions and UN Conventions. Timor-Leste is not currently a party to regional or bilateral free trade agreements. Timor-Leste has ASEAN observer status since 2002 and applied for membership in March 2011 but the application is still being

considered. Timor-Leste submitted its application for accession to the WTO in November 2016⁴¹ but has not yet acceded. There are no public procurement-specific obligations deriving from those sources.

Indicator 1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations

Sub-indicator 1(a) Scope of application and coverage of the legal and regulatory framework

Assessment Criteria

The legal and regulatory body of norms complies with the following conditions:

- (a) Is adequately recorded and organised hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.*
- (b) It covers goods, works and services, including consulting services for all procurement using public funds.*
- (c) PPPs, including concessions, are regulated.*
- (d) Current laws, regulations and policies are published and easily accessible to the public at no cost.*

Summary of findings

57. **Main strengths.**⁴² The procurement legal framework is organized hierarchically with precedence clearly established, it covers goods, works, services, and consulting services for all procurement using public funds, and procurement of PPPs is regulated.

58. **Recording and hierarchy of the legal and regulatory framework of public procurement.** Decree laws are stable laws, clearly placed in the hierarchy of laws with precedence established. The Constitution of the Democratic Republic of East Timor (2002) (Constitution)⁴³ is the highest source of law. The National Parliament makes laws (*Lei*) and the National Parliament may authorize the government to make laws (*Decreto-Lei*) (DL) on specified matters. The public procurement legal framework is made in this manner, being a collection of decree laws made by the government. The three decree laws most frequently referenced in the legal analysis for this MAPS assessment are government Decree Law No.10 of 2005, as amended (“PPL 2005”)⁴⁴; government Decree Law No.11 of 2005 Public contracts legal regime, and government Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime. There are no ministerial regulations implementing the decree laws on procurement, although these are envisaged in the decree laws.

59. **The Constitution confirms that rules provided for in international conventions, treaties and agreements** shall apply in the internal legal system of Timor-Leste following their approval, ratification, or accession by the respective competent organs and after publication in the official journal. Rules that are contrary to provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid. PPL 2005 provides for the principle of compatibility with international rules. It confirms that PPL 2005 shall not apply where it contradicts an international legal

⁴¹ <https://accessions.wto.org/acc/tls>, accessed January 14, 2022.

⁴² Main strengths are described where the MAPS Assessment Team have found them of particular note. Where the heading “Main strengths” does not appear in the presentation of a sub-indicator, this is because the MAPS Assessment Team has not identified strengths of particular note and thus, they are not described.

⁴³ Constituição da República Democrática de Timor-Leste, 2002.

⁴⁴ PPL 2005: Decree Law No.10 of 2005 Public Procurement Regime, as amended by Decree Laws No.14 of 2006, No.24 of 2008, No.1 of 2010, No.15 of 2011, No.38 of 2011 and No.30 of 2019 and No.5 of 2021. A consolidated version, showing all amendments made to the PPL 2005 is not available from the MoF website.

obligation undertaken by virtue of a treaty or other form of international agreement or an agreement with an international funding institution.

60. **Coverage – subject matter and value.** The scope of application of PPL 2005 is the procurement of goods, works and services, including consulting services by public services (procuring entities) using General State Budget and expenditures using other financial resources in the possession of, or controlled by public services. This includes procurement by the Infrastructure Fund (*Fundo das Infraestruturas*) and Human Capital Development Fund (*Fundo de Desenvolvimento do Capital Humano*). “Procurement” is broadly defined as purchase of goods, the execution of work, and rendering of services which have a public purpose. Special procurement regimes apply to procurement of equipment for use by military, policy and security services; where special security measures apply; procurement by the central procurement body operating in the health sector (Drugs and Health Equipment Service [*Serviço Autónomo de Medicamentos de Saúde*, SAMES) for drugs and health equipment; procurement in RAEOA, procurement of construction works up to US\$500,000 under PDID; and any other procurement procedures the government decides to regulate separately.

61. **Public private partnerships** PPP Procurement is subject to a separate legal regime. Decree Law No.42 of 2012 (as amended) (‘PPP Law’) establishes the legal regime for the PPPs for the development of public infrastructure.⁴⁵ A.11(2) PPP Law excludes procurement of PPP from the application of PPL 2005.

62. **Publication and accessibility of procurement legal framework documents.** PPL 2005 and other public procurement decree laws are accessible to the public at no cost from a dedicated page on the MoF website and can be downloaded. The collection of legal framework documents available from the MoF website is incomplete and out of date and a consolidated version of PPL 2005 is not available.

Substantive or material gap/s

63. **Scope and coverage.** Legislation is accessible online, but it is not fully up-to-date, and it is not presented in a consolidated and user-friendly format in official languages. This potentially hinders the ability of stakeholders to fully understand the legal framework and how it applies in practice, thus reducing accessibility in practice.

Sub-indicator 1(b) Procurement methods

Assessment Criteria

The legal framework meets the following conditions:

- (a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.*
- (b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.*
- (c) Fractioning of contracts to limit competition is prohibited*
- (d) Appropriate standards for competitive procedures are specified*

⁴⁵ Decree Law No.42 of 2012 Legal Regime for Public-Private Partnerships (*Regime Jurídico das Parcerias Público-Privadas*) , as amended (PPP Law). Annex 1, PPP Law list types of infrastructure projects.

Summary of findings

64. **Main strengths.** A range of procurement methods are clearly established, with preference given to use of the open tendering procedure for higher value contracts. PPL 2005 lists seven competitive and less competitive procurement methods (procedures,) with associated requirements/conditions for use of each method. The seven procurement methods are as follows: open tendering (*concurso público*), which is mandatory for all procedures of a value equal to or above US\$100 000; limited tendering with prequalification (*concurso limitado por pré-qualificação*); restricted tendering (*concurso restrito*); competitive negotiation or proposals in two stages (*negociação ou de propostas em duas etapas*); request for quotations (*solicitação de cotações*); direct award/agreement (*ajuste directo*); and simplified procedure (*procedimento simplificado*). PPL 2022 reduced the number of procurement procedures to three: competition, which may involve prequalification, request for quotes, and direct award.

65. **PPL 2005 provides that, preference shall be given to use of the open procedure**, as far as possible. Direct award is permitted only in exceptional circumstances and there are additional provisions in the legal framework concerning use of direct award for urgent acquisitions strictly necessary to deal with the emergency situation and satisfy immediate needs. PPL 2005 was not amended in response to the COVID-19 pandemic as the provisions covering direct award/agreement in the case of urgency were applied. A special, short term, procurement regime was introduced for procurement by local direct agreement of a basic basket of essential food, plus personal hygiene products for supply to the population."

66. **The procurement methods prescribed include competitive and less competitive procurement procedures**, with the possibility of 'lighter' methods for lower-value/lower-risk procurements and use of a prequalification stage for more complex/higher-value procurements as well as negotiated procurement method. There is a provision in PPL 2005 prohibiting fractioning of contracts to limit competition.

67. **Principles of Good Faith and Proportionality** (A.6 PPL 2005) provides that the procedure to be adopted shall be chosen in accordance with its adequacy to the purposes to be achieved, as well as the costs and benefits. PPL 2005 restricts discretion on choice of procurement procedures by requiring preferential use of open procedure and placing conditions on use of less competitive procedures.

Sub-indicator 1 (c) Advertising rules and time limits

Assessment Criteria

The legal framework meets the following conditions:

- (a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to sub-indicator 1(b)).
- (b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.
- (c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g., technological barriers).
- (d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.

Summary of findings

68. **Main strengths.** PPL 2005 requires that procurement opportunities for competitive procedures are publicly advertised.

69. **Advertising rules, time limits and content.** A.7 PPL 2005 Principles of Transparency and Publicity provides that the procuring entity shall ensure publicity of its contracting intention except where otherwise provided for by PPL 2005 or other applicable regulations. PPL 2005 requires that procurement opportunities for competitive procedures are publicly advertised. General principles set out in the PPL on calculation of deadlines require that there is sufficient time allowed for those interested in participating in a competition to be able to prepare and submit documents and other required information taking into account the reasonable needs of the procuring entity. Minimum time frames are, however, not defined, and there are no detailed rules on timelines for particular procedures and no specific provision or reference to extension of timescales when international competition is solicited. PPL 2022 resolves this issue, as it specifies minimum time frames for submission of proposals in the new Competition procedure, with longer timescales for high value procedures (where international advertisement is required) and procedures involving prequalification

70. **Publication of notices in a newspaper** of wide circulation is compulsory for the national open procedure and procedures using prequalification as well as for international open procedure where international publication is also required. PPL 2005 specifies the information to be included in the call for competition notice. However, the content of the call for competition notice listed in the PPL is not sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one as it does not specify that the subject matter of the contract must be described. PPL 2022 resolves this issue, requiring the subject matter of the contract to be described in the advertisement to be published on the procurement portal.

Substantive or material gap/s

71. **Advertising rules and time limits- timelines/minimum time frames.** PPL 2005 does not set out minimum time frames for particular procedures and there is no specific provision or reference to extension of timescales when international competition is solicited.⁴⁶

72. **Advertising rules - published content.** The content of the call for competition notice listed in PPL is not sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one as it does not specify that the subject matter of the contract must be described.

Sub-indicator 1(d) Rules on participation

Assessment Criteria

The legal framework meets the following conditions:

- (a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.*
- (b) It ensures that there are no barriers to participation in the public procurement market*
- (c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.*
- (d) It establishes rules for the participation of state-owned enterprises that promote fair competition*

⁴⁶ Confirmed in meeting between MAPS Assessment Team and the Government, February 23/24, 2022.

(e) *It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract*

Summary of findings

73. **Main strengths.** PPL 2005 sets out principles of legality and equality including a general requirement that conditions for access and participation are the same for all interested parties. PPL 2005 lists essential qualification requirements and grounds for disqualification from a particular procurement procedure and details the procedures to be used to determine the bidders' eligibility and ability to perform a specific contract.

74. **Participation based on qualification, eligibility, and exclusion.** A.4 PPL 2005 (Principles of Legality and Equality) provides that the conditions for access and participation are the same for all interested parties and that criteria for access and participation shall be [duly expressed] throughout the procurement procedure and that any discrimination between bidders is forbidden. PPL 2005 lists essential qualification requirements and grounds for disqualification from a particular procurement procedure. Offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed as grounds for exclusion/disqualification. PPL 2022 resolves this issue, listing offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking as grounds for exclusion from participation as candidates/tenderers in a procurement process.

75. **Barriers to entry.** While some respondents to the private sector survey have identified company registration, certification and registration of construction and technical consulting companies, notarial certification for proof of qualifications, and obtaining of import licenses as barriers, there is no preponderance of views on what a critical barrier is, so it cannot be construed as a systemic issue.

76. **Eligibility, exclusion, and administrative debarment.** Decree Law No.12 of 2005 on administrative offences under the legal regime of procurement and the legal regime of public contracts (DL 12/2005), defines the conduct which constitutes a relevant administrative offence and provides for a range of measures to be applied, including the possibility of temporary or permanent ineligibility (debarment). Decree Law 12/2005 also sets out the process to be followed, including a right of hierarchical appeal. In practice, no information is available to establish whether or to what extent this regime operates in practice and there is no list of debarred suppliers published in the procurement portal.

77. **Participation of SOEs.** There are no provisions in PPL 2005 or other public procurement related decree laws establishing rules for participation of SOEs. The standard bidding document for works, based on international finance institution standard provisions, provides that government-owned enterprises "may only participate if they are legally and financially autonomous, operate under commercial law and are not a dependent agency of the Employer" but this is not picked up elsewhere and is not in PPL 2005. There are no provisions in PPL 2022 establishing rules for participation of SOEs.

78. **Procedures for determining eligibility and ability of bidders** are relatively well detailed in PPL 2005. For specific types of more complex procurement and higher value contracts, the legal framework requires the use of prequalification ensuring the only eligible and qualified participants are included in the tender process. Circumstances where competitive negotiation or two stage procurement may be used are also defined in the legal framework.

Substantive or material gap/s

79. **Grounds for exclusion.** Conviction for offenses relating to terrorism, money laundering/terrorist financing, child labor, and trafficking is not specifically listed as a ground for exclusion/disqualification in PPL 2005.

80. **Debarment.** The legal framework provides for a system of administrative debarment, but no information is available to establish whether or to what extent this regime operates in practice and there is no list of debarred suppliers published on the procurement portal. Publicly available information on the operation and outcomes of the operation of a debarment regime can help to increase transparency and confidence in the procurement system as a whole.

81. **Participation of SOEs.** There are no provisions in PPL 2005 or other public procurement related decree laws establishing rules for participation of SOEs which promote fair competition and create a level playing field for all competitors.

Sub-indicator 1(e) Procurement documentation and specifications

Assessment Criteria

The legal framework meets the following conditions:

- (a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.*
- (b) It requires the use of neutral specifications, citing international norms when possible, and provides for the use of functional specifications where appropriate.*
- (c) It requires recognition of standards that are equivalent, when neutral specifications are not available.*
- (d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing).*

Summary of findings

82. **Main strengths.** The minimum content of competition (procurement) documents including instructions for bidders, qualification requirements and description of the subject matter of the contract is well defined in the legal framework. There is a clear process for bidders wishing to clarify procurement documents.

83. **Content of procurement documents.** The required minimum content includes instructions for preparing and submitting bids, qualification requirements and process and a description of subject matter of the contract including specifications and quality requirement. Terms and conditions are also to be included. The standard procurement/bidding documents comply with these requirements on content. The content of the procurement documents is relevant and sufficient for suppliers to respond to the requirement.

84. **Specifications.** PPL 2005 does not specifically refer to the use of neutral specifications and citation of international norms or for use of functional specifications where appropriate. These requirements are referred to in some of the standard bidding/procurement documents and in the Best Practice Guide on Tender Specification Writing. PPL 2022 contains a general prohibition on references to a particular manufacturer or provenance, a specific procedure that characterizes the products or services, or specific trademarks, patents, type, origins, or production methods. PPL 2022 includes provisions on equivalence, although it does not use the terminology 'neutral' or 'functional' specifications. PPL 2005 does not contain

provisions concerning recognition of standards or equivalence. However, the standard bidding/procurement documents and the Best Practice Guide on Tender Specification Writing refer to the principle of recognition of equivalent standards. PPL 2022 resolves this issue by including requirements for equivalence.

85. Clarification of procurement documents. PPL 2005 provides the opportunity for potential bidders to request clarification of the procurement documents in a preliminary conference, with appropriate provisions for response and communication.

Substantive or material gap/s

86. **Neutral and functional specifications.** PPL 2005 does not refer to the use of neutral specifications and citation of international norms or to the use of functional specifications where appropriate. This is an important requirement to enable suppliers to understand clearly what is requested of them and to avoid artificially narrowing competition.

87. **Recognition of equivalent standards.** PPL 2005 does not contain provisions requiring recognition of standards that are equivalent, when neutral specifications are not available. This is an important requirement to enable suppliers to understand clearly what is requested of them and to avoid

Sub-indicator 1(f) Evaluation and award criteria

Assessment Criteria

The legal framework mandates that:

- (a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.*
- (b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.*
- (c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.*
- (d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.*
- (e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process*

Summary of findings

88. **Main strengths.** Objective evaluation criteria, together with the evaluation methodology, must be specified and disclosed in advance in the procurement documents and are the basis for the award decision. Use of price and non-price attributes including quality and life-cycle costing is permitted.

89. **Evaluation criteria.** PPL 2005 mandates that evaluation criteria are pre-disclosed and objective and are specified in advance in the procurement documents. It requires that evaluation and the award decision are made solely on the basis of criteria stipulated in the document.

90. **Use of price and non-price attributes and quality in procurement of consulting services.** The use of price and non-price attributes is permitted. According to PPL 2005, the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio, where the purchase price is only one of the criteria. Analysis of life-cycle costing is required as standard. These

provisions also apply to the procurement of consulting services, in which two envelope assessment can be used, with technical proposals/quality considered first, followed by financial assessment.

91. **Evaluation criteria and weightings.** The legal framework requires allocation or numeric scales [points allocation] to evaluation criteria and disclosure of evaluation criteria in the invitations to tender. It is not clear from PPL 2005 whether disclosure of points/weightings must be disclosed in procurement documents but the Best Practice Guidance states that it is not mandatory to make the importance score (or weightings) of the evaluation known in the procurement documents. PPL 2022 resolves this issue, setting out details of evaluation process to be adopted including use of an evaluation matrix with published scoring methodology, weightings and tiebreak provisions.

92. **Nondisclosure of bids/proposals during the period of evaluation.** The legal framework provides for a general principle of confidentiality and specifically requires documents and data to be submitted by participants to be treated confidentially including during the evaluation period.

Substantive or material gap/s

93. **Evaluation and award criteria.** PPL 2005 does not require that procurement documents state the relative weights allocated to the criteria and the Best Practice Guide states that disclosure of the importance score (or weightings) is not mandatory. This gap has been resolved under PPL 2022.

Area for improvement:

94. There is no guidance regarding the evaluation method for consultancy services. Procuring agencies may find specific guidance of help to assist them in running effective procurement of consulting service, particularly on use of the two-stage process for evaluation with which they may be less familiar.

Sub-indicator 1(g) Submission, receipt and opening of tenders

Assessment Criteria

The legal framework provides for the following provisions:

- (a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission*
- (b) Records of proceedings for bid openings are retained and available for review.*
- (c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts*
- (d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.*
- (e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.*

Summary of findings

95. **Main strengths.** Tenders are opened at a public ceremony on dates and in a manner specified in the tender documents and PPL 2005, with clear requirements to maintain records and make them available for inspection.

96. **Bid opening.** The opening of tenders is conducted in a public ceremony, on dates specified in the tender documents and sets out the procedures to be followed and records to be made. The legal framework does not state/require that the opening of tenders takes place immediately following the closing date for bid submission. A.71 PPL 2005 requires the procuring entity to declare and document the

tender submission period closed. Any bid which is received after the deadline is returned unopened to the competitor. PPL 2022 does not establish the public opening of a bid and does not have a bid opening commission, with the jury being responsible for opening proposals and publication, within three days of the deadline for submission, a list of tenderers who submitted tenders within the deadline.

97. **Record of bid opening proceedings.** PPL 2005 requires records of bid proceeding to be retained. Decree Law No.43 of 2016 (DL 43/2016)⁴⁷ concerning access to official documents provides for a right of access to record by the public, which includes records of bid proceedings.

98. **Security and confidentiality of bids.** The legal framework lists the principle of confidentiality as one of the underlying principles and provides that the procuring entity, its employees and agents shall preserve the confidentiality of documents and information data submitted by competitors.

99. **Disclosure of specific sensitive information.** There is acknowledgement, in the context of provision in PPL 2005 on qualification, of the need to have regard to protection of intellectual property and trade secrets. There is no general provision in the procurement legal framework prohibiting or regulating disclosure of specific sensitive information. PPL 2022 resolves this issue with specific provisions defining and protecting confidential information.

Substantive or material gap/s

100. **Submission, receipt and opening of tenders – bid opening.** PPL 2005 does not state that the opening of tenders takes place immediately following the closing date for bid submission. Opening immediately after the deadline for submission of tenders reduces the possibility of loss or alteration of proposals or submissions. The legal framework would benefit from greater clarity on this point.

101. **Disclosure of specific sensitive information.** PPL 2005 does not include provisions protecting specific sensitive information including reference to protection of trade secrets and proprietary information, or protection of privacy and acknowledging the need to avoid disclosure of information that can be used to distort competition.

Sub-indicator 1(h) Right to challenge and appeal

Assessment Criteria

The legal framework provides for the following:

- (a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.*
- (b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award decision and grant remedies, and also establish the right for judicial review.*
- (c) Rules establish the matters that are subject to review.*
- (d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body*
- (e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.*
- (f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).*

⁴⁷ Decree Law No.43 of 2016 Rules Relating to Access to Official Documents [Regras Relativas ao Acesso a Documentos Oficiais].

Summary of findings

102. **Main strengths.** PPL 2005 ensures the right for participants in procurement proceedings to make a complaint (that is, challenge) in respect of decisions or actions taken by the public service (procuring entity) on specified grounds, with timescales specified for both submission and decision on a complaint.

103. **Administrative review.** A.101 PPL 2005 provides participants in procurement proceedings with the right to respond to a decision on a complaint (*reclamação*) by means of hierarchical appeal. There is no specialist independent administrative appeal/review entity. The bodies competent to decide the hierarchical appeal are “leaders of State organs of power, ministers and secretaries of State...” and cannot be guaranteed independent of the procuring entity. PPL 2022 retains a system of hierarchical appeal and thus the possibility of lack of independence identified under PPL 2005. Award decisions are suspended pending a definitive decision on hierarchical appeal. PPL 2005 does not specify the remedies which may be granted by the competent entity in a hierarchical appeal. PPL 2022 resolves this issue by listing the available remedies in the context of hierarchical appeal.

104. **Matters subject to the right to review.** A.96 to 100 PPL 2005 set out provisions concerning the right of competitors to submit a complaint and the available grounds for complaint. Decisions on complaint will be the subject matter of the right of hierarchical review. There are three grounds for complaint: failure to fulfil the rules laid down in PPL 2005 or implementing regulations; failure to fulfil the terms and conditions stated in the prequalification or competition (tender) documents, and failure to comply with a decision adopted by the competition jury which may infringe existing legal rules. The competencies of the competition jury are wide, including decisions on exclusion, prequalification, selection, and award of contract.

105. **Time frames and publication.** PPL 2005 sets out time frames for submission of complaints and for issuance of decisions on complaints and hierarchical appeal. Applications for appeal and decision are not published in an easily accessible place on a central online platform to allow interested parties to be better informed as to the consistency and fairness of the process. According to law in Timor-Leste, hierarchical review is not public.⁴⁸

106. **Higher-level review.** There is no specific provision in the PPL establishing a right for judicial review of a decision made in hierarchical appeal. Any decision made by an administrative body is, however, subject to the general right of judicial review. The general right of judicial review can also be used to challenge a decision on hierarchical review, but this route of appeal is not specifically provided for in PPL 2005. PPL 2022 resolves this issue as it specifically provides for the right of judicial appeal (judicial review) including in respect of decisions made in hierarchical appeals.

Substantive or material gap/s

107. **Lack of independence of hierarchical review.** The bodies competent to consider an appeal against a decision on hierarchical review are not guaranteed sufficiently independent of the procuring entity (public service). There is the possibility that the competent entities for appeal may have been involved, or have the potential to be involved, in some capacity in the procurement transaction or process leading to contract award decisions which is the subject of complaint. The lack of independence has a potentially wide impact, including on integrity, transparency of the appeal system and on public trust. This gap is

⁴⁸ Information provided by MoF in clarifications with the MAPS Assessment Team.

allocated a red flag because the system of hierarchical appeal is not limited to the procurement context, being applicable in appeals against other types of administrative decisions. Review and possible changes to this review system are thus likely to require a wider discussion and engagement with government stakeholders in particular and may not be solely within the purview of the Ministry of Finance.

108. **Remedies available on hierarchical review.** PPL 2005 does not specify the remedies which may be granted by the competent entity in a hierarchical appeal. Right for judicial review: PPL 2005 does not specifically refer to a right for judicial review of decisions made on hierarchical appeal.

109. **Right for judicial review.** PPL 2005 does not specifically refer to a right for judicial review of decisions made on the hierarchical appeal.

110. **Publication of applications for appeal and decisions.** Applications for hierarchical appeal and decision on hierarchical appeal are not published in an easily accessible place on a central online platform to allow interested parties to be better informed as to the consistency and fairness of the process.

Sub-indicator 1(i) Contract management

Assessment Criteria

The legal framework provides for the following:

- (a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.*
- (b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.*
- (c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.*
- (d) The final outcome of a dispute resolution process is enforceable.*

Summary of findings

111. **Main strengths.** Conditions for contract amendments are defined and there are efficient and fair processes to resolve disputes, with final outcomes being enforceable.

112. **Functions for contract management.** PPL 2005 provides that specific rules on public contracts are laid down in the government statute. Decree Law No.11 of 2005 Legal Regime of Public Contracts ('Public Contracts Law') establishes basic rules applicable to public contracts. The Public Contracts Law includes provisions on approval and signature, delegation of powers, work of the Contracts Committee and formalities regarding public contracts, content of public contracts and guarantees. Procurement Best Practice Guide 7 Managing Contracts refers to the appointment of an appropriately qualified contract manager who is named in the agreement and the importance of senior management oversight of contract management. The Public Contracts Law does not include detailed provisions on monitoring of contract delivery, inspection of quality, control, or supervision, or monitoring of contract performance clauses designed to ensure social or environmental standards. PPL 2022 includes provisions on monitoring and supervision, verification, and final acceptance, but it does not fully resolve the issue of lack of detailed provisions required to ensure complete and timely contract implementation.

113. **Conditions for contract amendment.** Conditions for contract amendments are defined in PPL 2005 in general terms, with specified safeguards for contract price increases.

114. **Dispute resolution.** The Public Contracts Law provides for processes for dispute resolution in a fair and timely manner, with preference for amicable settlement and fallback provisions where

appropriate, providing for adjudication or arbitration. These provisions are reflected in the standard procurement documents.

115. Enforcement of final outcome of dispute resolution. The Public Contracts Law provides for enforcement through the competent courts and, where relevant, resort to adjudication and arbitration. Timor-Leste has adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Substantive or material gap/s

116. The Public Contracts Law lacks detailed provisions on some matters required to ensure complete and timely contract implementation, such as monitoring and supervision of contract delivery and monitoring contract performance clauses.

117. Contract management functions and responsibilities. The Public Contracts Law lacks detailed provisions on some matters required to ensure complete and timely contract implementation, such as monitoring and supervision of contract delivery and monitoring contract performance clauses.

Sub-indicator 1(j) Electronic procurement (e-procurement)

Assessment Criteria

The legal framework provides for the following:

- (a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.*
- (b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the system, taking into consideration privacy, security of data and authentication.*
- (c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.*

Summary of findings

118. There is no e-procurement system. PPL 2005 does not allow or mandate use of e-procurement solutions covering the public procurement cycle, whether entirely or partially, nor does it address issues concerning use of tools and standards for access to an e-procurement system or require parties to be informed which parts of the process will be managed electronically. PPL 2022 addresses this issue and allows for the use of electronic procurement when practical conditions permit. A.14 PPL 2022 Principle of electronic process requires public administrative sector services and entities to use electronic means of procurement and contracting to promote administrative efficiency and transparency and requires advertisement on the procurement portal. PPL 2022 also contains provisions on use of electronic means for sending invitations, clarifications and contract signing. PPL 2022 acknowledges practical constraints on the rollout of electronic procurement by including transitional rules pending announcement of full electronic processing of procurement and contracting.

Substantive or material gap/s

119. Use of e-procurement. At present, there is no e-procurement system and e-procurement solutions are not currently available. Thus, there are no provisions in PPL 2005 which allow or mandate e-procurement solutions covering the procurement cycle.

120. **Use of tools and standards providing access to e-procurement system.** At present, there is no e-procurement system. Thus, there are no provisions in PPL 2005 for the use of tools and standards for access to an e-procurement system. With the potential introduction and rollout of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly address the requirements for tools and standards applying to an e-procurement system to provide unrestricted and full access, considering privacy, security of data and authentication.

121. **Informing interested parties of e-procurement.** At present, there is no e-procurement system. Thus, there are no provisions in PPL 2005 requiring interested parties be informed which parts of the processes will be managed electronically. With the potential introduction and rollout of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly set out a requirement for interested parties to be informed which parts of the processes will be managed electronically, which can then be reflected in content of standard bidding documents for mandatory use.

122. As a period of transition from paper based to e-procurement is likely, it is also very important to include provisions in the legal framework to clarify whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-procurement.

Sub-indicator 1(k) Norms for safekeeping records, documents and electronic data

Assessment Criteria

The legal framework provides for the following:

- (a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This should be kept at the operational level. It should outline what is available for public inspection including conditions for access.*
- (b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.*
- (c) There are established security protocols to protect records (physical and/or electronic).*

Summary of findings

123. **List of procurement records.** PPL 2005 lists procurement records and documents to be retained by procuring entities in a procurement folder, including information on contracts awarded. Public access to such documents is governed by Decree-Law No.43/2016 concerning Access to Official Documents.

124. **Document retention policy and statute of limitations.** There is no procurement-specific documents retention policy. A.63 Law No. 2 of 2022 State General Budget and Public Finance Management Framework (Law 2/2022)⁴⁹ requires maintenance of physical and digital records of all budget operations (which includes procurement) for at least ten years after they are carried out.

125. **Security protocols.** The Assessment Team was unable to establish whether there are procurement-specific security protocols to protect physical and/or electronic procurement files.

Substantive or material gap/s

⁴⁹ Law of National Parliament No.2 of 2022 State General Budget and Public Finance Management Framework [Enquadramento do Orçamento Geral do Estado e da gestão financeira pública].

126. **Norms for safekeeping records - limitation periods for investigations of fraud and corruption.** The 10-year retention period for maintenance of records of all budget operation provided for in A.62 Law 2/2022 does not align with statute of limitations for prosecution of fraud and corruption provided for in the Criminal Code under which the limitation period can range from 4 to 20 years, depending on the alleged offense and related potential maximum prison sentence.

127. **Security protocols.** There are requirements for maintenance of both physical and electronic records, but it is not clear where there are established procurement-specific security protocols to protect physical and/or electronic procurement files.

Sub-indicator 1(I) Public Procurement principles in specialised legislation

Assessment Criteria

The legal and regulatory body of norms complies with the following conditions:

- (a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.*
- (b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.*
- (c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.*

Summary of findings

128. **Main strengths.** Specialized legislation is in place for procurement of drugs and health equipment, subject to established procurement principles. There is a dedicated PPP law and responsibilities for development and support of PPPs are clearly allocated.

129. **Procurement by entities operating in specific sectors.** There is a specialized regime for procurement of drugs, medical consumables and medical equipment falling under the competence of SAMES with financial thresholds applying to use of public tender, restricted tender and request for quotations. PPL 2022 revokes the legislation establishing this special regime, bringing this type of procurement within the coverage of PPL 2022. There is a special regime for procurement of construction works up to US\$500,000 under PDID which reserves award of contracts to companies based in the district where the project is to be implemented. This regime is subject to principles of legality, transparency, and accountability and procedural safeguards. Some public enterprises, such as those in the banking sector, are active in the commercial market and the PPL does not apply to their activities. In the case of the electricity sector company *Electricidade de Timor-Leste (EDTL)*⁵⁰ and water sector company BTL⁵¹ (clean water and sanitation), the organic laws establishing these companies provide that the PPL shall apply, subject to specified exclusions. PPL 2005 does not address the issue of whether and to what extent SOEs are subject to PPL 2005. Organic laws establishing some public enterprises specifically provide for application of PPL 2005

130. **Procurement of PPPs.** The PPP law requires use of competitive procedures for procurement of PPPs, except in exceptional circumstances and provides that PPP procurement procedure should be

⁵⁰ EDTL EP, established by Decree Law No.29 of 2020, creates Public Company Electricity Timor-Leste and approves respective statutes [Cria a empresa pública Eletricidade de Timor-Leste e aprova os respetivos Estatutos].

⁵¹ Bee/BTL: Bee Timor-Leste (BTL EP), established by Decree Law No.41 of 2020 Creates Public Company Bee Timore-Leste and approves respective statute [Cria a Empresa Pública Bee Timor-Leste e Aprova os Respetivos Estatutos].

conducted in accordance with principles of justice, equality, transparency, competition, efficiency and accountability

131. Responsibilities for policy and implementation of PPP. The National Directorate of Public-Private Partnerships (*Direção Nacionalde Parcerias Público-Privadas*) (DNPPP) (formerly the UPPP) has primary responsibility for developing policies and supporting the implementation of PPPs.

Substantive or material gap/s

132. SOE procurement. It is unclear whether or to what extent PPL 2005 or public procurement principles (for example, competitive procedures, transparency fairness, value for money decisions) apply to procurement by all SOEs across the spectrum of public service delivery, using state funds. These risks reducing transparency and accountability in the expenditure of state funds.

133. Explanatory Note on all Tables titled ‘Overview of Substantive or Material Gaps – with Risk Classification and Recommendations’

- Substantive or material gap is a short summary only (see summary analysis above for fuller description).
- Red flags, marked with a red asterisk*, are assigned for Substantive or Material Gaps that impede the main goals of procurement and that cannot be mitigated directly or indirectly or could lie outside the sphere of public procurement⁵².
- Risk classification (Low=L, Medium=M or High=H) is assigned according to the degree of risk they may pose to the system,⁵³ as evaluated by the Assessment Team.

Table 3: Pillar I Indicator 1: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
1(a)(d) Current laws, regulations and policies are published and easily accessible.	Published legal framework documents are not comprehensive or up to date.	M	Ensure that all laws, regulations, and policies are published online and are up to date. Accessibility could be further enhanced by providing consolidated version/s of the procurement law/s and publication in official language/s of the country.
1(c)(b) Minimum time frame for submission of bids/proposals is defined for each procurement method.	No minimum time frames are specified	L	Include provisions in the PPL setting out minimum time frames for submission of bids/proposals for each procurement method, with extended time frames for international competition
1(c)(d) Published content is sufficient to allow potential bidders to determine whether they are able to submit a bid	The content of the call for competition notice listed is not sufficient.	L	Include in PPL a requirement to include information on subject matter of the contract in the call for competition notice.

⁵² MAPS Methodology 2018, paragraph 24

⁵³ MAPS Methodology 2018, paragraph 41

SI	Substantive or material gap Red flag *	Risk	Recommendation
and are interested in submitting one			
1(d)(c) Legal framework provides for exclusions for criminal and corrupt activities.	(1) Conviction for some specified offenses is not listed as grounds for exclusion.	L	(1) List conviction for offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking as grounds for exclusion/disqualification in the PPL.
1(d)(c) Legal framework provides for administrative debarment, subject to due process.	(2) No information is available to establish whether or to what extent this regime operates in practice and there is no list of debarred suppliers published on the procurement portal.	M	(2.1) The government could consider increased oversight of administrative debarment process and debarment decisions as well as greater transparency to ensure that the approach adopted is consistent and proportionate. Oversight could, for example, be by way of centralized monitoring of decisions by the body with responsibility for normative procurement functions and ensuring that debarment decisions are published in practice. (2.2) The government could consider preparing and publishing a user-friendly guide on the conduct of debarment proceedings to assist in ensuring that a consistent approach is adopted and that contractors subject to such proceedings are able easily to understand the process and the consequences of a debarment decision.
1(d)(d) Rules for participation of SOEs.	There are no provisions in procurement legislation establishing rules for participation of SOEs.	L	Include provisions in procurement legislation establishing rules for participation of SOEs that promote fair competition and ensure a level playing field for all competitors.
1(e)(b) Legal framework requires use of neutral specifications, citing international norms and use of functional specifications.	PPL 2005 does not require use of neutral specifications, citation of international norms or functional specifications.	L	Include provisions in the PPL requiring the use of neutral specifications and reference to international norms where possible, to ensure clarity of requirement and ensure that these provisions flow through consistently into the guidelines and standard procurement documents. The use of functional specifications should, where appropriate, be permitted to promote innovation.
1(e)(c) Legal framework requires recognition of equivalent standards.	PPL 2005 does not require recognition of standards that are equivalent, when neutral specifications are not available.	L	Include provisions in the PPL requiring recognition of standards that are equivalent, when neutral specifications are not available and ensure that these provisions flow through consistently into the Guidelines and Standard Procurement Documents.
1(f)(d) Weighting of evaluation criteria is clearly defined.	No requirement to state the relative weights allocated to the evaluation criteria	L	Include provisions in the procurement legislation requiring publication of weightings (if used) in the procurement documents.
1(g)(a) Opening of tenders immediately	PPL 2005 does not require tender opening to take	L	Include provisions in the procurement legislation requiring tenders to be opened

SI	Substantive or material gap Red flag *	Risk	Recommendation
following the closing date for bid submission.	place immediately following the closing date for bid submission.		immediately following the date for submission, except in specified circumstances. Include relevant provisions to allow for future rollout of e-procurement
1(g)(d) Disclosure of specific sensitive information is prohibited.	PPL 2005 does not include provisions protecting specific sensitive information.	L	Include provisions in the PPL to address protection of trade secrets and proprietary information or, protection of privacy.
1(h)(b) Challenge with administrative review by a body independent of the procuring entity.	*The bodies competent to consider an appeal against a decision on hierarchical review are not guaranteed sufficiently independent of the procuring entity (public service).	H	<p>Critical study of the current system of hierarchical review plus short term/interim measures:</p> <p>(a) Consider undertaking a critical study of the data available and stakeholders' views on the operation of the system of hierarchical review to assess the level of independence of decision making, and confidence in and effectiveness of the operation of the system in practice.</p> <p>(b) Consider also requiring publication of applications for hierarchical review and decisions on hierarchical review to enhance transparency and confidence in the system.</p> <p>(c) Consider and put into place interim measures such as user-friendly guidance, pending outcome of the critical study to ensure greater clarity as to the process to be followed and issues considered by decision-makers in hierarchical appeal and to enhance the independence of decision-makers in hierarchical review.</p> <p>(d) It is highly recommended to also consider, as part of the critical study on hierarchical appeal, or in a separate exercise, whether alternative models for review/appeal of decisions on complaint, such as creation of a specialist independent review function or body, may improve the independence, transparency and effectiveness of the review/appeal process and public procurement system as a whole. This may include measures linked to the development of electronic government procurement (e-GP) system and use of a complaints review module.</p>
1(h)(b) Body undertaking administrative review (appeal) has authority to grant remedies.	PPL 2005 does not specify the remedies which may be granted by the competent entity in a hierarchical appeal.	M	Include in the PPL a list of the remedies which may be granted on hierarchical appeal.

SI	Substantive or material gap Red flag *	Risk	Recommendation
1(h)(b) The legal framework establishes the right to judicial review.	PPL 2005 does not specifically refer to a right for judicial review of decisions made on hierarchical appeal.	L	Include in the PPL specific reference to right for judicial review.
1(h)(e) Publication of applications for appeal and decisions.	Applications for hierarchical appeal and decision on hierarchical appeal are not published.	H	Include provisions in the PPL requiring publication for applications for hierarchical appeal and decisions on hierarchical appeal. Ideally, publication should be on a central online platform.
1(i)(a) Contract provisions to ensure complete and timely contract implementation.	The Public Contracts Law lacks detailed provisions on some matters required to ensure complete and timely contract implementation,	M	Include in the procurement legal framework clear and appropriately detailed provisions defining the functions and assigning responsibilities for undertaking contract management including monitoring and supervision of contract delivery and monitoring contract performance clause. More detailed provisions could be incorporated in standard contractual documents for mandatory use
1(j)(a) Legal framework allows or mandates e-procurement solutions.	At present, there is no e-procurement system and e-procurement solutions are not currently available.	L	Include provisions in the PPL setting out the principle of transparency, with unrestricted and full access to the e-procurement system for all stakeholders, as and when the e-procurement system becomes available and necessary user infrastructure is achieved.
1(j)(b) Provision for use of tools and standards for access to e-procurement system.	At present, there is no e-procurement system. Thus, there are no provisions for the use of tools and standards for access to an e-procurement system.	L	Include provisions in the PPL to ensure that requirements for tools and standards applying to an e-procurement system are met, to provide unrestricted and full access, considering privacy, security of data and authentication. Further detail may, for example, be included in rules on operation of the e-procurement system when it is rolled out.
1(j)(c) Parties are informed which part of process will be managed electronically.	At present, there is no e-procurement system. Thus, there are no provisions requiring interested parties be informed which parts of the processes will be managed electronically, whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-procurement.	L	Include provision in the PPL requiring public services to inform interested parties which parts of the processes will be managed electronically as and when the e-procurement system becomes available. Consider including in standard bidding documents information on which parts of the processes will be managed electronically. Include provisions in the legal framework confirming whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-procurement.

SI	Substantive or material gap Red flag *	Risk	Recommendation
1(k)(b) Document retention policy is compatible with statute of limitations.	The 10-year retention period for maintenance of records of all budget operation provided for in A.62 Law 2/2022 does not align with statute of limitations for prosecution of fraud and corruption provided for in the Criminal Code under which the limitation period can, potentially, exceed 10 years.	M	Review provisions on retention of procurement related documents and revise as appropriate to ensure alignment with statute of limitations for prosecution of fraud and corruption.
1(k)(c) There are established security protocols to protect records (physical and/or electronic).	It is not clear whether there are established procurement-specific security protocols to protect physical and/or electronic procurement files.	M	Consider preparation of procurement-specific security protocols to protect physical and/or electronic procurement files.
1(l)(a) Public procurement principles apply to procurement by entities operating in specific sectors.	It is unclear whether or to what extent PPL 2005 or public procurement principles (for example, competitive procedures, transparency fairness, value for money decisions) apply to procurement by all SOEs across the spectrum of public service delivery, using state funds. This risk reducing transparency and accountability in the expenditure of state funds.	M	Review the rules applying to SOEs to ensure consistency of application of provisions requiring PPL or public procurement principles to be applied when procuring for public service delivery using state funds. Also consider obliging all SOEs to publish user-friendly guidance for suppliers and information on the conduct and evaluation of procurement using state funds.

SI	Area for improvement recommendation
1(f)(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	Consider publishing specific guidance on available methods for evaluation of proposals for consulting services and how to apply those evaluation methods in practice.

Indicator 2. Implementing regulations and tools support the legal framework

Sub-indicator 2(a) Implementing regulations to define processes and procedures

Assessment Criteria

- (a) *There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.*
- (b) *The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.*
- (c) *Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.*

Summary of findings

134. **Implementing regulations.** There are no regulations issued by the Minister of Finance to supplement and detail the provisions of the procurement, although these are envisaged in the procurement-related decree laws. Responsibility for providing regulations lies with the Minister of Finance. As there are no regulations of general application issued by the Minister of Finance, there is no updating. PPL 2022 has been prepared with a level of detail and content aimed at avoiding the need for subsequent legislation (implementing regulations). As the ministry responsible for procurement, the MoF has power to prepare additional legislation, if the need arises.⁵⁴

Substantive or material gap/s

135. **Implementing regulations to define processes and procedures.** There are no regulations issued by the Minister of Finance to supplement and detail the provisions of PPL 2005, although these are envisaged in PPL 2005.

Sub-indicator 2(b) Model procurement documents for goods, works, and services

Assessment Criteria

- (a) *There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.*
- (b) *At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.*
- (c) *The documents are kept up to date, with responsibility for preparation and updating clearly assigned.*

Summary of findings

136. **Model procurement documents.** There are “standard procurement documents” for goods and services, medium works, and consultancy services, but the documents are, for the most part, presented as sample documents with project-specific information inserted rather than a full set of standardized templates for completion by users. The collection of procurement documents is not wide ranging or comprehensive. They are available only in English. There are no standard procurement documents for specialized procurement, such as information technology (IT) or more complex procurements.

137. **Content of model procurement documents.** The standard procurement documents contain standard provisions including instructions to bidders, bidding documents and general conditions of

⁵⁴ Information provided by Ministry of Finance in response to clarifications from MAPS Assessment Team.

contract for use in competitive tendering/bidding. The status of the standard bidding documents and templates and particularly whether use of the standard bidding documents is mandatory, are unclear.

138. **Updating of model procurement documents.** The standard bidding documents published on the MoF webpage have not been regularly updated since their publication in 2010/11. Responsibility for preparation and updating is not clearly assigned.

Substantive or material gap/s

139. **Model procurement documents.** A few 'standard procurement documents' are published, but they are not clearly presented as standardized templates for completion by users and the collection is not wide ranging or comprehensive. Standard procurement documents do not appear to have been updated since 2010/11 and are available only in English, raising the question to what extent these documents are of practical use and whether they are of any assistance in training and capacity building.

140. **Standard and mandatory set of clauses for use in competitive tendering/bidding.** It is unclear what is the status of the standard bidding documents and templates. It is not clear whether use of the Standard procurement documents, or particular clauses or parts of the standard procurement documents, is mandatory (use of standard contract clauses is mandatory, see below).

141. **Responsibility for and updating of standard bidding documents.** The standard bidding documents have not been regularly updated. Responsibility for preparation and updating of model procurement documents is not clearly assigned. PPL 2022 resolves this issue, providing that CNA shall be responsible for preparing models and forms with a view to standardizing procedures.

Sub-indicator 2 (c) Standard contract conditions

Assessment Criteria

- (a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.*
- (b) The content of the standard contract conditions is generally consistent with internationally accepted practice.*
- (c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.*

Summary of findings

142. **Main strengths.** There are standard contract conditions for most common types of contracts, use of which is mandatory.

143. **Standard contract conditions.** There are standard contract conditions for most common types of contracts. According to Decree Law No.11 of 2005, use of standard forms of contracts is mandatory.

144. **Content of standard contract conditions.** The standard contract conditions are contained within the standard bidding documents and appear to be based on international standard models at the time the documents were prepared in 2010/11 and they have not been updated.

145. **Provision of standard contract conditions.** Standard contract conditions are an integral part of the procurement documents. PPL 2005 requires that in competitive procedures the procuring entity provides each competitor with a set of competition (procurement) documents.

Substantive or material gap/s

146. **Standard contract conditions.** The standard contract conditions appear to be based on international standard models at the time the documents were prepared in 2010/11. They have not been updated to reflect current internationally accepted practice.

Sub-indicator 2(d) User's guide or manual for procuring entities

Assessment Criteria

(a) *There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.*

(b) *Responsibility for the maintenance of the manual is clearly established, and the manual is updated regularly.*

Summary of findings

147. **User's guide or manual.** There is a set of Best Practice Guides which cover the process for correct implementation of procurement legal framework, but these are available only in English, date from 2010/11 and have not been updated to fully reflect legislative changes.

148. **Maintenance of the user's guide or manual.** PPL 2005 lists one of the competences of the Procurement Service being to advise the Minister of Finance on procedures handbook to assist implementation, although there is no specific reference to ongoing maintenance. There is also reference to operational guidelines falling within the functions of *Direção Nacional de Aproveitamento*. There is no evidence that the Best Practice Guides have been updated regularly.

Substantive or material gap/s

149. **Responsibility for and maintenance of the user's guide or manual.** The Best Practice Guides do not appear to have been updated since 2010/11 and are available only in English, raising the question to what extent the standard procurement documents are of practical use and whether they are of any assistance in training and capacity building. There is no allocation of responsibility for the specific task of maintenance of the Best Practice Guides.

Table 4: Pillar I Indicator 2: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
2(a) There are regulations that supplement and detail provisions of the procurement law	No implementing regulations have been published.	M	Ensure that where the procurement law refers to additional regulations to be issued to supplement and detail the provisions of that law, additional regulations are prepared, adopted and published promptly in a single accessible location. Regulations should be complementary to the procurement law and should not create inconsistencies. Responsibility for maintenance of the regulations should be clearly established and regulations should be reviewed and updated regularly to ensure that they remain fit-for-purpose.
2(b) There are model procurement documents for a wide range of uses with a mandatory set of clauses, and they are regularly reviewed with responsibility clearly assigned.	Standard procurement documents are not presented as standardized templates and it is unclear whether their use is mandatory. The collection is not comprehensive. They are available only in English and have not been regularly updated and responsibility for their preparation and updating is not clearly assigned	M	Prepare and publish standard procurement documents, in relevant official and/or working languages, aligned with the PPL in force in the form of user-friendly templates for completion, with guidance notes on their use. Ensure that the standard procurement documents cover an appropriate range of goods, works and services procurement as well as types of procurement from simple forms of procurement to procurement of complex projects. Consider preparing and publishing templates for more specialized procurement which is conducted regularly, such as procurement of IT and in the health sector. Ensure that it is clear whether/to what extent use of standard bidding documents is mandatory and relevant legal provisions mandate that use. Establish measures to ensure regular review and updating of standard procurement documents, including clear assignment of responsibility for review and updating.
2(c) Content of standard contract conditions is generally consistent with internationally accepted practice	The standard contract conditions have not been updated.	M	Prepare standard contract conditions, as appropriate for the subject matter and nature of the procurement, and in line with current internationally accepted practice.
2(d) There is a comprehensive manual detailing all procedures for correct implementation, with responsibility for maintenance clearly established and the	The Best Practice Guides have not been updated to fully reflect legislative changes and are only available in English. Responsibility for maintenance is not clearly established.	M	Prepare and publish Best Practice Guides (or equivalent), in relevant official and/or working languages, aligned with the PPL in force and consistent with standard procurement documents and standard contract conditions. Assign responsibility in the legal framework for maintenance (review) and updating of Best Practice Guides, or equivalent. Establish measures to ensure regular review and

SI	Substantive or material gap Red flag *	Risk	Recommendation
manual is updated regularly.			updating of Best Practice Guides (or equivalent).

Indicator 3: The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations

Sub-indicator 3(a) Sustainable Public Procurement (SPP)

Assessment Criteria
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.
(c) The legal and regulatory frameworks allow for sustainability (that is, economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.
(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.

Summary of findings

150. Government objectives are aligned to the UN 2030 SDG and public procurement is a driver in their achievement. Timor-Leste does not, however, have a specific policy or strategy to implement SPP in support of national policy objectives nor a related implementation plan. PPL 2005 provides for use of some measures which fall within the general heading of “sustainable public procurement” such as life cycle costing and provisions for promotion of local development and industry in evaluation of bids. These measures are piecemeal, and PPL 2005 does not contain comprehensive measures allowing for all aspects of sustainability (economic, environmental, and social criteria, including gender responsive public procurement) to be incorporated at all stages of the procurement cycle, to ensure balanced application of sustainability criteria and value for money. PPL 2022 refers to incorporation of environmental, social and economic issues in preparation of specifications for works and widens the description of non-price factors in evaluation to include accessibility, design for all users, social, environmental and innovative characteristics and supply conditions and environmental and social sustainability of the way in which the contract is performed.

Substantive or material gap/s

151. **SPP policy/strategy:** Timor-Leste does not have a specific policy or strategy to implement SPP in support of national policy objectives.

152. **SPP policy/strategy implementation plan.** Timor-Leste does not have a specific policy or strategy to implement SPP in support of national policy objectives and thus there is no implementation plan.

153. **Incorporation of SPP into procurement cycle.** PPL 2005 does not contain comprehensive measures allowing for all aspects of sustainability (economic, environmental, and social criteria) to be incorporated at all stages of the procurement cycle.

154. **Sustainability criteria.** PPL 2005 does not fully address all aspects of sustainability (economic, environmental and social) in sufficient detail to ensure balanced application of sustainability criteria and ensure value for money.

Sub-indicator 3(b) Obligations deriving from international agreements

<p>Assessment Criteria</p> <p>Public procurement related obligations deriving from binding international agreements are:</p> <p>(a) clearly established</p> <p>(b) consistently adopted in laws and regulations and reflected in procurement practice.</p>

Summary of findings

155. Timor-Leste is not currently a party to regional or bilateral free trade agreements.⁵⁵ Timor-Leste has ASEAN observer status since 2002 and applied for membership in March 2011, but the application is still being considered. Timor-Leste submitted its application for accession to the WTO in November 2016⁵⁶ but has not yet acceded. There are no public procurement-specific obligations deriving from those sources. Timor-Leste has ratified a number of ILO Conventions⁵⁷ and UN Conventions.⁵⁸ Section 9(2) of the Constitution provides that rules contained in international conventions, treaties, and agreements shall apply in the internal legal system of Timor-Leste following their approval, ratification, or accession by the respective competent organs and after publication in the official journal.

Table 5: Pillar I Indicator 3: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
3(a)(a) Policy/strategy in place to implement SPP.	No policy or strategy to implement SPP.	M	Prepare a policy/strategy to implement SPP in support of broader national policy objectives.
3(a)(b) SPP implementation plan.	No SPP implementation plan.	M	Undertake an in-depth assessment to prepare an implementation plan for SPP policy/strategy. The SPP implementation plan should identify the institution to lead on this development, systems, tools, and capacity-building measures required to operationalize,

⁵⁵ ADB Asia Integration Center, FTA online database, accessed January 14, 2022.
<https://aric.adb.org/fta-country>

⁵⁶ <https://accessions.wto.org/acc/tls>, accessed January 14, 2022

⁵⁷ Timor-Leste has ratified the following ILO Conventions: Forced labor conventions, 1930; Freedom of Association and Protection of Right to Organize Convention, 1948; Right to Organize and Collective Bargaining Convention, 1949; Equal Remuneration Convention, 1951; Discrimination (Employment and Occupation) Convention, 1958; Worst Forms of Child Labor Convention, 1999.
https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103251
 accessed February 16, 2022.

⁵⁸ Timor-Leste has acceded to the following UN conventions: Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights & Second Optional Protocol aiming to the abolition of the death penalty, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of the Child & Optional Protocols on the involvement of children in armed conflict and on the sale of children child prostitution and child pornography.
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN,
 accessed January 14, 2022.

SI	Substantive or material gap Red flag *	Risk	Recommendation
			facilitate, and monitor the application of SPP. Responsibilities, timelines and funding for implementation should also be included in the implementation plan.
3(a)(c) Sustainability incorporated as all stages of the procurement cycle.	Lack of comprehensive measures for all aspects of sustainability at all stages of procurement.	L	Include provisions in the PPL to allow for all aspects of sustainability (economic, environmental, including climate change), and social, including gender-responsive public procurement) to be incorporated at all stages of the procurement cycle - from planning to delivery and contract conclusion. Provisions in the PPL should be supported by practical guides on how to incorporate and apply sustainability considerations in all stages of the procurement cycle together with capacity building to ensure appropriate and effective application and use in practice
3(a)(d) Legal provisions require well-balanced application of sustainability criteria to ensure value for money.	Not all aspects of sustainability are addressed to ensure balanced application and value for money.	M	See above (Sub-indicator 3(a)(c)).

3.2. Pillar II - Institutional Framework and Management Capacity

Summary of Pillar II

156. This summary for Pillar II presents an overview of the analysis discussed in this chapter. The analysis is drawn from further detailed information in the Indicator Matrix at Volume II.

157. **Integration of public procurement into the PFM systems.** Timor-Leste has made efforts to mainstream the public procurement framework into the country's PFM systems by (a) requiring that procurement cycle information be captured in upstream budget formulation and procurement plans be integrated into the budget submission; (b) securing the commitment of budget funds through a 'commitment and payment voucher' (FCP); (c) creating a feedback mechanism on budget-execution for public works contracts; (d) providing that the procurement launch is contingent upon the certification of the appropriation of funds; and (e) developing procedures for processing of invoices and authorization of payments. It was noted however, that the procurement planning requirements in support of budget planning are not fully captured in the procurement norms and guidance to procurement practitioners. Furthermore, the feedback on budget execution by contract (particularly major contracts) is not revealed on the government results portal to consistently inform stakeholders of the financial and physical progress. Finally, while there are procedures for processing invoices, there are delays in payment of invoices that adversely affect the performance and financial health of the contractors/suppliers/consultants.

158. **Public procurement institutional framework and functions.** Timor-Leste has established an institutional framework and assigned the normative regulatory function to the MoF and the related functions (for example, advisory, training, developing tools and documents, managing online platforms and statistical databases, proposing and drafting changes to the legal framework) to different MoF department such as CNA, Legal Support Office, Office for Policy, Reforms and Capacity Building in PFM (*Gabinete de Política de Reforma e Capacitação em Gestão das Finanças Públicas/GPRCGFP*), Office of Integrated Systems of Financial Management Information (*Gabinete de Sistemas Integrados de Informação de Gestão Financeira/GSIIGF*) or other agencies such as ADN. The assessment noted that there is not always clarity as to how these functions are assigned particularly when more than one agency/department has a role in their implementation.

159. **Procuring entities definition and responsibilities.** The way in which procuring entities are defined in PPL 2005 is insufficiently precise as several different terms are used (PPL 2022 resolves this issue). However, responsibilities are clearly defined and so are the requirements related to establishing a designated, specialized procurement function and the delegation of authorities and accountabilities.

160. **Centralized procurement.** While Timor-Leste has considered the benefits of centralized procurement and is applying it for the procurement of drugs and medical equipment and is also considering adopting it for vehicles, the government has not yet looked in depth into the potential benefits of establishing a centralized procurement function in other cases, for example, for small and frequent purchases or commonly used goods and services, where such an approach may result in greater efficiency and reduced transaction costs. Neither the current PPL 2005 nor the newly adopted PPL 2022 provides for framework agreements. A country with a relatively small national market and low capacity, such as Timor-Leste, can obtain advantages from consolidating procurement, when appropriate, and negotiating whole of government contracts to achieve value for money particularly for recurrent procurement: office supplies, services (catering, travel, cleaning), IT equipment, and vehicles. The consolidation of recurrent procurement through framework agreements has the potential to generate

economies of scale, cuts transaction cost and reduces the need for a vast procurement workforce to support a myriad of small purchases. With the advent of e-procurement such framework approaches can be supported by e-catalogues and e-auctions. Finally, it is important to underscore that framework agreements are also a tool to increase the level of preparedness in face of unforeseen natural emergencies to ensure continued supply of goods and services to Timorese citizens.

161. Availability of procurement information supported by technology and e-procurement development. While a centralized procurement portal offers information on tenders and awards there is still a gap between what currently exists and what would be considered international best practice. The e-procurement agenda has not been launched yet to bring more transparency and efficiency in the public procurement systems and enable effective monitoring of procurement performance. However, the new PPL 2022 has now created the legal framework to enable its development.

162. Capacity building. While there are ad hoc training events delivered by the MoF and CNA and other donors supported programs, there are no permanent and substantive training programs in the area of procurement linked to competency standards. Procurement is not recognized as a profession and the professionalization of the procurement staff is not envisaged at this stage. Consultants/fixed-term employees are used to fill in staff gaps and this does not help stabilize a robust workforce of qualified civil servants in public procurement. While there are transparent recruitment procedures based on merit, in practice appointments are also driven by the political cycle as there are frequent changes of procurement staff once there is a change in the administration. The CAC 2019 baseline survey states that political patronage and influence over staff appointments may politicize the public service. These practices negatively affect building a technically competent and sustainable procurement workforce.

163. Monitoring performance to improve the procurement systems. The country has not yet established a performance monitoring and measurement system in public procurement to evaluate the effectiveness of the public procurement system, from individual procurements to the national system as a whole to support procurement policy formulation and strengthening. The absence of performance monitoring hinders the attainment of good outcomes in procurement with adverse impact on the public expenditures efficiency.

Indicator 4. The public procurement system is mainstreamed and well-integrated with the public financial management system

Sub-indicator 4(a) Procurement planning and the budget cycle

Assessment Criteria:

The legal and regulatory framework, financial procedures and systems provide for the following:

- (a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.*
- (b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).*
- (c) A feedback mechanism reporting on budget execution is in place, particularly regarding the completion of major contracts.*

Summary of findings

164. **Main strengths.** The normative framework on planning, budgeting, monitoring and evaluation requires that procurement plans inform budget preparation. It further requires that funds appropriately cover the contract amount through commitment controls that are built in the GRP system. Finally, there is a feedback mechanism on budget execution, including large contracts through quarterly reporting on budget execution by the project owners to the MoF.

165. **The procurement planning and the budget cycle.** PEFA confirms that procurement planning is included in the budget cycle (PI-24). The decree law on planning, budgeting, monitoring, and evaluation⁵⁹ underscores the need to consider procurement in the upstream review of budget preparation by identifying where the project is in the procurement cycle and requires that the budget plan be accompanied by a procurement plan. Non submittal of the plan is a cause of rejecting the proposal and returning it to the agency to address the omission. However, the requirement for the preparation of the procurement plan in support of the budget preparation is not explicitly addressed in specific procurement regulations and guidance. The system would need to be strengthened by underscoring this principle in procurement regulations and Best Practice Guide for procurement planning and by bringing this important topic into the training program to effectively support the implementation of this requirement.

166. **Budget funds commitment to cover contract needs during the budget period.** According to the annual government decrees on budget execution,⁶⁰ contracts cannot be signed without corresponding budget availability and the FCP ensures that funds are set aside to meet the commitment undertaken. The FCP identifies the activity (consistent with the annual plan and budget programs) and the amount of expenditures to be incurred, and presents a detailed description of the expense, including the technical specification of the goods, services or works. It is not allowed to split an expense into multiple FCPs to circumvent the rules on expense authorization. Commitment controls have been further strengthened with the improvements in the system to ensure monitoring and controls at the item, not only category level. PEFA (PI-25) states that expenditure commitment controls are in place and effectively limit commitments to projected cash availability and approved budget allocations for most types of expenditure.

⁵⁹ Decree Law No.22 of 2015 on planning, budgeting, monitoring and evaluation [*Sobre Planeamento, Orçamentação, Monitorização e Avaliação*].

⁶⁰ Government Decrees No.1 of 2021 and No.13 of 2022 on budget execution [*Execução do Orçamento Geral do Estado*].

167. **Feedback mechanism reporting on budget execution.** Reports on the contract status are sent periodically to the MoF as part of the budget execution monitoring. Namely, according to the budget execution decrees⁶¹ the agencies of the central administration have to report quarterly to the Directorate General for the Treasury (DGT) the level of execution of all public works contracts concluded in the previous quarter, as well as the physical progress reports relating to all works in progress or completed in the previous quarter for publication in the procurement portal and on the results portal of the government. ADN⁶² monitors the financial and physical progress for the contracts it manages at the municipality level. While the annual disbursement status is summarized for all Infrastructure Fund contracts in the Budget Book 3, it does not include the same level of information on the physical progress, and it is not accessible on the procurement portal. The results portal⁶³ where the financial and physical progress is captured is outdated.

Substantive or material gap/s

168. **Procurement planning's support of budget planning and formulation.** While the budget legislation requires that procurement be considered in the budget planning and preparation, PPL 2005, Best Practice Guide, and Infrastructure Fund Administration Manual of November 2020 (Infrastructure Manual) are silent on this particular aspect of procurement planning.

169. **Feedback mechanism for execution particularly, for major contracts.** The reporting on the contracts' implementation, as published, does not generally include physical progress and the results portal where financial/physical progress is displayed is not updated.

Sub-indicator 4(b) Financial procedures and the procurement cycle

Assessment Criteria:

The legal and regulatory framework, financial procedures and systems should ensure that:

- (a) No solicitation of tenders/proposals takes place without certification of the availability of funds.*
- (b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.*

Summary of findings

170. **Main strengths.** Procurement and commitment controls are appropriately linked as the legal and regulatory framework ensures that no solicitation of tenders/proposals takes place without certification of the availability of funds by the competent authority. Regarding payment regulations, according to PEFA, there are national payment regulations (treasury manuals, annual decrees on budget execution, standard operating procedures [SOPs]) that are followed and embedded into the GRP system.

171. **Solicitation of tenders/proposals is conditioned upon the certification of the availability of funds.** There are strict requirements for the procurement process to be approved provided that the related expenditure has been also approved. The government decree for budget execution states that any expenditure (*Despesa*) needs to be approved by the competent authority and if the expenditure is for a procurement activity the two authorizations (for the expenditures and commencement of procurement

⁶¹ Government Decrees 1/2021 and 13/2022 on budget execution.

⁶² <http://adn.gov.tl/geospatl.php?tld=t2&lang=en>

⁶³ <http://governmentresults.gov.tl/publicResults/summary>.

(*autorizar despesa e procedimentos de aprovisionamento*) can be obtained simultaneously if they are provided by the same body.

172. The national regulations/procedures for processing of invoices and authorization of payments are publicly available but there are delays in payments to contractors. Payment rules and procedures are in place (PEFA 25.3) and are detailed in the Treasury Manual and complemented with specific instructions in the government decree for budget execution (for example, Decree 1/2021, Decree 13/2022). As further noted by PEFA, additional SOPs, including flowcharts, have been prepared by the MoF (for example, SOP for payment processing for line ministries and for autonomous agencies). Payment rules and procedures are enforced through the GRP system while payment statistics are monitored by the DGT.

173. Regarding the time to process payments, interviews with procuring entities (private sector survey, ADN) revealed that delays are not unusual under government contracts, and they are mainly caused by the fact that there is no regular supervision of works and by reportedly a lengthy/bureaucratic certification process. The MAPS private sector survey confirms that payments are delayed beyond the one-month legal standard. The ADB Construction Market Analysis of December 2019 states that such delays can go from three months to one year, and they are a key binding constraint for the private sector. This is particularly significant considering that the normal government budget runs in a calendar year. There are not yet national consolidated statistics on the length of the payment process. The invoice tracking module of the GRP system has been launched relatively recently, in April 2022.

Substantive or material gap/s

174. Processing regulations of invoices and payments. While there are payment regulations and the payment authorizations have been increasingly decentralized, there are issues related to timely payment including because of a lengthy certification process of the works to be paid. This is caused by the absence of regular supervision of the works.

Table 6: Pillar II Indicator 4: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
4 (a)(a) Annual or multiannual procurement plans support budget planning.	PPL 2005, Best Practice Guide and Infrastructure Manual do not mention or elaborate on how procurement planning supports budget preparation.	L	The requirement for annual or multiannual procurement plans to facilitate budget planning and formulation process should be included in the procurement guides/Infrastructure Manual and in the procurement and PFM training.
4(a)(c) A feedback mechanism reporting on budget execution is in place, particularly regarding the completion of major contracts.	The progress of major contracts is not comprehensively monitored and published.	M	The financial and physical progress by (major) contract should be monitored and published in the government results portal, consistent with the budget regulations.

SI	Substantive or material gap Red flag *	Risk	Recommendation
4(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders.	While there are payment regulations there are consistent payment delays.	M	Resolve the delays in payment by addressing the root causes that may include weaknesses in contract management, supervision, length of the certification process and bureaucratic payment processes.

Indicator 5. The country has an institution in charge of the normative/ regulatory function

Sub-indicator 5(a) Status and legal basis of the normative/regulatory institution function

Assessment Criteria:

The legal and regulatory framework, financial procedures and systems provide for the following:

(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.

Summary of findings

175. **Main strengths.** The legal and regulatory framework broadly specifies the normative/regulatory function (competence) and assigns it to the MoF.

176. **The Minister of Finance⁶⁴ holds the normative/regulatory competences for public procurement,** pursuant to the MoF Organic Law.⁶⁵ According to PPL 2005 the Procurement Service (*Serviço de Aproveitamento*), a department of the MoF, is charged with coordination of procurement regulated by PPL 2005 and is assigned a list of competences and responsibilities. In practice, this Procurement Service department has not been established in the MoF. Hence, its competences and responsibilities are discharged by various units/departments/offices in the MoF administrative structure including CNA, with ADN also fulfilling a role in normative/regulatory matters for major projects. Overall, the assignment and execution of the various normative/regulatory functions is disparate, creating potential overlaps, and there is a lack of a central coordinating mechanism. PPL 2022 partially addresses this issue by adding to the list of normative/regulatory tasks falling within the remit of the CNA, thus creating a stronger centralized procurement lead, but only for specified/limited functions.

Substantive or material gap/s

177. **Assignment of the normative/regulatory function and formal powers of institution(s) in charge.** The normative/regulatory function is assigned to the MoF, but the MoF Procurement Service department envisaged in PPL 2005 to discharge normative/regulatory function and fulfil a central coordinated role is

⁶⁴ PPL 2005 refers to the "Minister of Planning and Finance" and "Ministry of Planning and Finance," but in this context the terms "Ministry of Finance," "Minister of Finance," or "MoF" are used, for simplicity.

⁶⁵ MoF Organic Law: Decree Law No.28 of 2019 Ministry of Finance Organic Law [*Orgânica do Ministério das Finanças*], as amended by Decree Law No.43 of 2020.

not established. While most of the competences related to the good functioning of the public procurement are generally assigned to the MoF, there is not always clarity in the legal framework as to which departments they are assigned and the role of the departments when more than one is involved, which creates the risk of gaps and/or overlapping functions.

Sub-indicator 5 (b) Responsibilities of the normative/regulatory function

Assessment Criteria:

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

- (a) providing advice to procuring entities.*
- (b) drafting procurement policies.*
- (c) proposing changes/drafting amendments to the legal and regulatory framework.*
- (d) monitoring public procurement and regulatory framework.*
- (e) providing procurement information.*
- (f) managing statistical databases.*
- (g) preparing reports on procurement to other parts of government.*
- (h) developing and supporting implementation of initiatives for improvements of the public procurement system.*
- (i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement.*
- (j) supporting the professionalisation of the procurement function (for example, development of role descriptions, competency profiles and accreditation and certification schemes for the profession).*
- (k) designing and managing centralised online platforms and other e-Procurement systems, as appropriate.*

Summary of findings

178. Main strengths. PPL 2005 assigns wide-ranging responsibilities to the MoF: drafting procurement policies, proposing changes/drafting amendments to the legal and regulatory framework, monitoring public procurement, providing procurement information, managing statistical databases, preparing reports to other parts of the government, taking initiatives for improving public procurement, providing tools and documents, building capacity and designing and managing online platforms.

179. Assignment of the specific responsibilities of the normative/regulatory functions. According to PPL 2005, the Procurement Service (*Serviço de Aproveitamento*), a department of the MoF, is charged with coordination of procurement regulated by PPL 2005 and is assigned a list of competences and responsibilities. Since this service was not created the competences and responsibilities are discharged by various units/departments/offices in the MoF administrative structure as designated in the MoF Organic Law as outlined below. The functions are not exhaustively covered and there is sometimes lack of clarity as to the leading department and potential for overlap. ADN also fulfils a role in normative/regulatory matters for major projects. PPL 2022 allocates more functions to CNA that are expressed in fairly general terms and are in summary as follows: conducting or supporting the conduct of procurement procedures, with CNA to conduct high-value procurement procedures (over US\$1 million) and conduct or provide support on procurement procedures below that threshold at the request of the contracting authority; issuing opinions, recommendations, developing standard templates and forms; creating and maintaining supplier qualification databases and database of fines and penalties under the sanctions regime [*regime contraordenacional*] provided for in PPL 2022; promoting procurement training; conducting the proceedings under the sanctions regime; and performing any other tasks assigned by law.

Decree Law No. 14 of 2011⁶⁶ (DL 14/2011), which established CNA needs to be amended to ensure alignment with the functions allocated to CNA under PPL 2022.

- **Providing advice to procuring entities.** PPL 2005 assigns the function (competence) of providing advice to procuring entities to the Procurement Service, a department of the MoF that has not been created. According to the MoF Organic Law, CNA which is part of the MoF has responsibility for providing technical assistance on procurement procedures of a value below US\$1 million carried out by all public entities. ADN has also a role in providing technical input in specified areas of expertise. PPL 2022 retains the current role of CNA to conduct high value procurement procedures (over US\$1 million), to support the conduct of other procurement procedures and allocates additional functions to CNA, including issuing opinions and recommendations which, it is assumed, may include provision of advice to procuring entities.
- **Drafting procurement policies.** PPL 2005 assigns to the Minister of Finance, the competence to submit procurement policy related proposals to the government. The MoF Organic Law assigns the function of drafting procurement policies to the MoF. Within the MoF, this function is assigned in practice to the Legal Support Office. The MoF Organic Law assigns the responsibility to update and improve policy and procedures including in the area of procurement to the MoF GPRCGFP.
- **Proposing changes/drafting amendments to the legal and regulatory framework.** The MoF Organic Law provides that it is the responsibility of the Minister of Finance to propose the necessary projects of regulation in a number of listed areas including procurement and PPL 2005 gives the Minister of Finance the competence to provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL.
- **Monitoring public procurement.** PPL 2005 assigns to the Minister of Finance, the competence to monitor procurement procedures to ensure they are compliant with policies defined by the government. PPL 2005 is not clear whether monitoring is a competence assigned to the Procurement Service. The CNA which is part of the MoF is, according to the MoF Organic Law and the law establishing the CNA, assigned the task of monitoring procedures carried out by public entities. Prior review of high value contracts is carried out by the *Camara de Contas*. Both ADN and SGP are also assigned monitoring rules on major contracts. PPL 2022 does not assign a general function of monitoring of public procurement to a central oversight body.
- **Providing procurement information:** PPL 2005 does not explicitly assign responsibility for providing general information on procurement for the benefit of stakeholders (such as public bodies, suppliers and CSOs) or to publish comprehensive annual reports on public procurement. PPL 2022 does not refer to the function of providing procurement information.
- **Managing statistical databases.** PPL 2005 assigns to the Procurement Service, a department of the MoF, the responsibilities to draw up and keep accurate records and accounts of procurement activities and to draw up financial information and reports which can faithfully

⁶⁶ Decree Law No.14 of 2011 Establishing the National Procurement Commission [*Estabelece a Comissão Nacional de Aproveitamento*].

show the operations, resources and expenses related to the procurement activity and to submit them to top levels. It is not entirely clear, however, whether these responsibilities are intended to apply only to procurement conducted by the Procurement Service or are intended to apply to all public procurement activity in Timor-Leste. In practice, there is no Procurement Service department within the MoF. According to the MoF Organic Law, it is the responsibility of the MoF to publish official statistics. However, the legal framework does not identify a specific department in charge of this function to manage public procurement statistical databases. PPL 2022 assigns competence for management of statistical databases for specified activities to the CNA.

- **Preparing report on procurement to other parts of the government.** PPL 2005 assigns to the Minister of Finance, the competence to submit reports to the government on the implementation of procurement policies and make proposals for corrective measures. PPL 2005 places responsibilities on the Procurement Service, a department of the MoF, to draw up financial information and reports for submission to superiors. There is no Procurement Service department within the MoF. The Director of the CNA is responsible for preparing and submitting reports of activities to superiors. PPL 2022 does not refer to the function of preparing reports on procurement for provision to other parts of government.
- **Developing and supporting implementation of initiatives for improvements of the public procurement system.** PPL 2005 assigns to the Minister of Finance the powers to submit reports to the government and make proposals for corrective measure on the implementation of procurement policies as well as the power to monitor procurement procedures to ensure compliance with policies. PPL 2005 assigns to the Procurement Service, a department within the MoF, competence to advise and assist the Minister of Finance on matters concerning implementation. There is no Procurement Service department within the MoF. According to the MoF Organic Law, it is the responsibility of the MoF to propose the necessary projects of regulation of procurement and the MoF/GPRCGFP has the function to update and improve procurement. PPL 2022 does not refer to the function of developing and supporting implementation of initiatives for improvements in the public procurement system.
- **Providing tools and documents to support training and capacity development** of the staff responsible for implementing procurement. PPL 2005 assigns to the Procurement Service, a department within the MoF, competences to provide tools and documents and to provide and support training and capacity development of staff. Since this department was not created, in practice, CNA develops tools and documents for their own use that are disseminated to other agencies. Under PPL 2022 CNA is assigned functions to provide procurement related, tools, documents and training. According to the MoF Organic Law, GPRCGFP has functions to identify needs and promote transparent and accountable public finance management practices through training programs as well as developing accreditation programs. Integrity training is a requirement of the anti-corruption law which refers specifically to public procurement in this context.
- **Supporting professionalization** of the procurement function. The public procurement legal framework focuses on training and does not address the professionalization of the procurement function. PPL 2022 identifies training among the functions of CNA but does not refer specifically to professionalization of procurement staff. According to the MoF Organic

Law, MoF/GPRCGFP is in charge of training, accreditation and competency standards for the whole PFM sector.

- **Designing and managing centralized online platforms and other e-procurement systems.** The MoF Organic Law provides that the MoF GSIIIGF is responsible for developing and managing an integrated financial management information system in all services and bodies of the public administration. The MoF/GPRCGFP is tasked under the MoF Organic Law with promoting transparency through the procurement portal and interconnection of procurement information systems among various public agencies.

Substantive or material gap/s

180. The gaps identified arise either because the normative/regulatory functions are not defined or not sufficiently clearly defined in PPL 2005, or the normative/regulatory functions are allocated by PPL 2005 to the Procurement Service department of the MoF and that department has never been established. In practice, the normative/regulatory functions allocated to the Procurement Service are discharged by various units/departments/offices in the MoF administrative structure and there is a lack of clarity and completeness of coverage. The summary findings above provide information, where available, on both the formal allocation of responsibilities and discharge of specified normative/regulatory functions in practice. The lack of a clear identification and assignment of the normative/regulatory functions and the absence of an appropriate governance system with an entity/unit in charge of developing, monitoring and improving the system has a negative impact on the operation of the system leading to suboptimal outcomes. The reason why the red flag was raised is twofold as this gap (i) can significantly impede achieving the objectives sought through public procurement and (ii) it relates to organizational issues which extend beyond the Ministry of Finance and cannot be remedied simply by changes in the PPL 2022. The following is a short summary of the gaps identified:

- **Providing advice to procuring entities.** This function is assigned to the Procurement Service but is discharged by CNA. It is not clear whether the advisory functions discharged by CNA apply only to provision of advice on particular procurements or whether the intention is to cover advice to procuring entities of a more general nature on public procurement related issues.
- **Drafting procurement policies.** This function is assigned to the MoF and discharged by the MoF's Legal Support Office. The legal and regulatory framework, however, contains references to other units that might play a role in this area, which creates ambiguity.
- **Monitoring of public procurement.** This function is not sufficiently clearly described in the legal and regulatory framework, and there are multiple institutions involved, with potential overlapping functions.
- **Providing procurement information.** PPL 2005 does not explicitly describe or assign the function of providing general information on procurement for the benefit of stakeholders.
- **Managing statistical databases.** There is lack of clarity in PPL 2005 when describing to whom this responsibility is assigned.
- **Preparing reports on procurement of other parts of government.** This function is assigned to the Procurement Service, and it is not clear which department within the MoF discharges this function in practice.

- **Developing and supporting implementation of initiatives for improvements in the public procurement system.** This function is assigned to the Procurement Service, and it is not clear which department within the MoF discharges this function in practice
- **Providing procurement tools, documents and procurement related training.** This function is assigned to the Procurement Service, and it is not clear which department within the MoF discharges this function in practice.
- **Supporting professionalization.** The MoF Organic Law assigns functions for professional standards for all PFM sectors to MoF/GPRCGFP, but PPL 2005 does not assign the functions of supporting professionalization, accreditation, certification and developing competency standards in procurement.
- **Designing and managing online platforms.** This function is not clearly defined and assigned in PPL 2005. The MoF Organic Law assigns related functions to two MoF departments (GSIIGF and GPRCGFP), but more clarity is required as to their role in the area of procurement.

Sub-indicator 5(c) Organization, funding, staffing, and level of independence and authority

Assessment Criteria:

- (a) *The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.*
- (b) *Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.*
- (c) *The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities.*

Summary of findings

181. **The institutional setup, funding, authority of the normative regulatory function.** The normative regulatory power is assigned to the MoF that has the required authority, but the functions are spread out among various departments of varying capacity. Thus, there is no coordination mechanism to monitor and provide leadership at the national level. Not all the functions identified in PPL 2005 have been properly assigned and discharged. Within the MoF, two key departments that discharge this function are GAJ and CNA. GAJ supports the entire legal activity under the MoF jurisdiction, not only procurement. CNA capacity is weak relative to the functions it needs to carry out also in view of the additional tasks under PPL 2022. Other departments are (a) GPRCGFP with the role of updating and improving policy and procedures, promoting capacity building, and formulating competency standards in PFM; and (b) GSIIGF charged with developing and managing information systems, including in the area of procurement.

Substantive or material gap/s

182. **Assignment of the normative regulatory power.** There is no comprehensive coordination of public procurement (policy, operation and performance) at the national level. The “procurement service” that was assigned to carry out these functions was never created and the assignment of these functions to multiple units, while acceptable, requires a coordinating mechanism to allow for coherent policy making and performance management in Timor-Leste public procurement. This gap is allocated a red flag for the same reasons explained for the red flag at sub-indicator 5(b) (see paragraph 180).

183. Insufficient capacity and staffing of the institution(s) discharging the regulatory function. Departments that have broader responsibilities (for example, PFM) are yet to develop their capacity to carry out tasks in the area of public procurement policy. CNA, the central agency that plays a crucial role in public procurement processes and development faces some capacity and staffing issues as civil servant salaries do not attract qualified staff and CNA ability to outsource seems limited. In light of the additional functions CNA will undertake under the PPL 2022, it is imperative that CNA capacity and staffing be strengthened to be able to deliver on these functions.

Sub-indicator 5(d) Avoiding conflict of interest

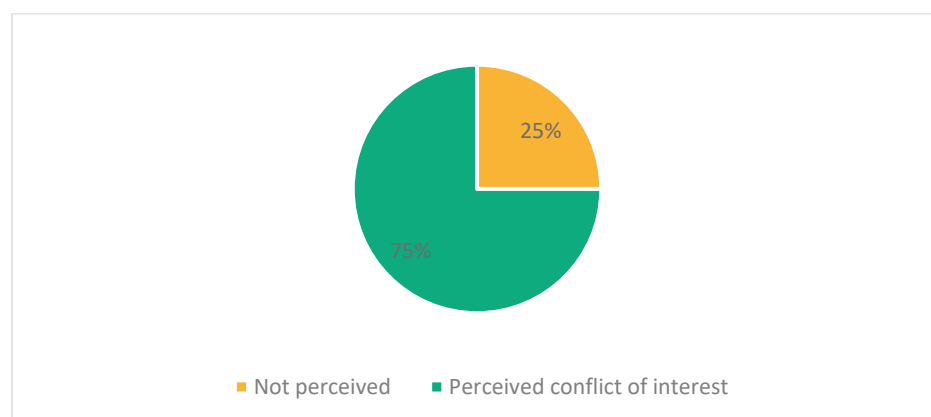
Assessment criterion:

(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.

Summary of findings

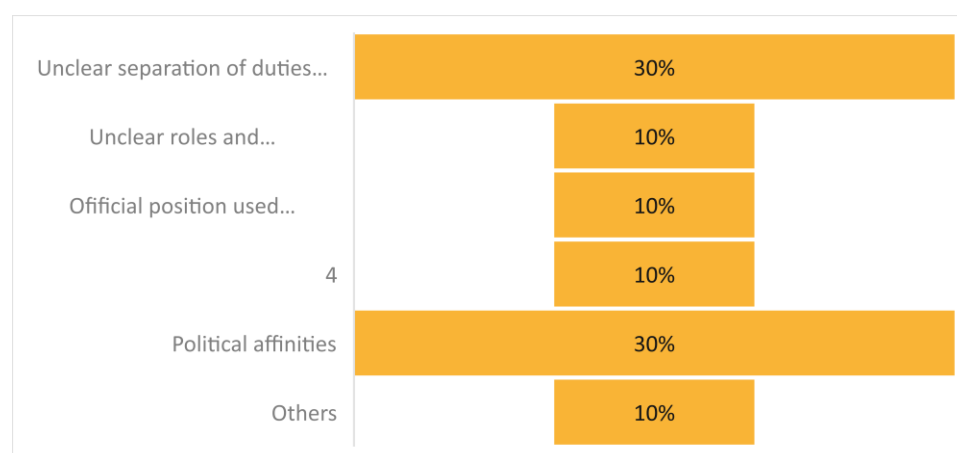
184. Mechanisms to avoid conflict of interest in the normative/regulatory institutions. There are broad legal provisions on conflict of interest (see Sub-indicator 14(d)) that are relevant but not specific to the normative regulatory function. Specific requirements would include provisions such as individuals discharging the normative/regulatory functions to not have been directly involved in procurement operations and at the same time monitoring/auditing procurement practices or acting on behalf of appeals body. About 75 percent of the respondents under the MAPS private sector survey opined that conflict of interests is obvious or abundant and is mostly due to political affinities and/or unclear separation of duties of public officials (see Figures 6 and 7). PPL 2022 continues to address conflict of interest for public servants in discharging their procurement function but does not make specific references to conflict of interest related to the regulatory/normative function.

Figure 6: Perception of conflict of interest in Timor-Leste public procurement



Source: MAPS private sector survey.

Figure 7: Perceived reasons for conflict of interest



Source: MAPS private sector survey.

Substantive or material gap/s

185. **The normative/regulatory institution systems to avoid conflicts of interest.** While there are pertinent legal provisions and requirements to avoid conflict of interest under the civil service, PPL and anti-corruption regulations, there are no conflict-of-interest requirements specific to the normative regulatory function.

Table 7: Pillar II Indicator 5: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
5(a) & 5(b) Status and legal basis of the normative/regulatory institution and clarity in the definition and assignment of normative/regulatory functions.	<p>*The normative/regulatory functions (responsibilities) are assigned to MoF, but the MoF Procurement Service department envisaged in PPL 2005 to discharge normative/regulatory functions and fulfil a central coordinated role is not established. The Procurement Service competences and responsibilities are discharged by various units/departments/offices in the MoF administrative structure, with ADN also fulfilling a role in normative/regulatory matters for major projects. Overall, the assignment and execution of the various normative/regulatory functions is disparate, creating potential for overlaps, and there is a lack of a central coordinating mechanism.</p> <p><i>Note: Each of the functions is considered separately in the detailed analysis, with</i></p>	H	<p>The legal framework should describe the public procurement normative and regulatory functions and responsibilities more comprehensively and clearly and assign them unambiguously (in the PPL 2022 and/or the MoF Organic Law, or further regulations/as appropriate).</p> <p>When these functions are assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

SI	Substantive or material gap Red flag *	Risk	Recommendation
	<i>identified gaps covered by the general description herein.</i>		
5(c)The institution's internal organization, authority, funding and staffing are sufficient and consistent with its responsibilities.	<p>*With the normative/regulatory functions discharged by various units (mostly in the MoF), there is no coordinating mechanism to allow for a cohesive operation, monitoring and developing a holistic strategic vision.</p> <p>Financing and staffing have not been sufficient to deliver all the functions assigned under PPL 2005. CNA, whose role is going to be strengthened under PPL 2022, does not have sufficient resources to discharge these additional functions.</p>	H	<p>Conduct a critical and evidence-based review of the actual setup and performance of the units in charge of the normative and regulatory functions to improve institutional clarity in assigning responsibilities, appropriate organization structure and financial and human resources consistent with the tasks assigned. Identify a coordinating mechanism. Learn from the experience of countries such as, Mauritius, and Cabo Verde.</p> <p>Improve procurement financing and strengthen CNA ability to attract qualified staff or outsource consultants when needed (also in view of the additional responsibilities acquired under PPL 2022).</p>
5(d) Avoiding conflict of interest under the normative regulatory function	While there are legal provisions to prevent and mitigate conflict of interest under Timor-Leste regulations there are no specific provisions related to conflict of interest under the normative and regulatory functions.	H	Include in the procurement legal framework requirements for preventing conflict of interest specific to the normative and regulatory framework such as individuals discharging the normative/regulatory functions (for example, monitoring/auditing procurement practices or acting on behalf of the appeals body) should not be involved in procurement operations/transactions

Indicator 6. Procuring entities and their mandates are clearly defined.

Sub-indicator 6(a) Definitions responsibilities and formal powers of procuring entities

Assessment Criteria:

The legal framework provides for the following:

- (a) Procuring entities are clearly defined.*
- (b) Responsibilities and competencies of procuring entities are clearly defined.*
- (c) Procuring entities are required to establish a designated, specialised procurement function with the necessary management structure, capacity and capability.*
- (d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the monetary sums involved.*
- (e) Accountability for decisions is precisely defined.*

Summary of findings

186. **Main strengths.** Important legal institutional requirements are clearly captured in PPL 2005 such as the procuring entities' responsibilities and the need for the procuring entities to establish a specialized procurement function consistent with the associated risks. Decision-making is delegated based on risk and well-defined monetary thresholds and accountabilities are clearly defined in PPL 2005.

187. The narrative below lays out how various institutional requirements regarding the procuring entities' mandates and powers are defined in PPL 2005 and concludes that most of them are properly addressed except for the definition of procurement entities.

188. **Definition of procuring entities.** The term used to describe procuring entities for PPL 2005 is 'public service'. The definition of 'public service' encompasses the concept of contracting entity and procuring entity and terms may be used interchangeably, according to the context. PPL 2005 identifies two specialized procuring entities: (a) CNA,⁶⁷ which is the central service of the MoF responsible for carrying out procurement processes for high-value projects, and (b) '*Central de Fornecimentos do Património*', intended to function as a central supply body. PPL 2022 identifies the procuring entity in a simpler way, using the defined term 'contracting entity' ('*entidade adjudicante*'). PPL 2022 continues to identify CNA as the public service specialized in the instruction and conduct of procurement procedures and no longer references the central supply body.

189. **Responsibilities and competencies of procuring entities** are generally well captured in PPL 2005 including the setting up, competence, operation and decisions of contract committees, tender opening committees and tender evaluation committees/*júri*. PPL 2005 defines the appointment and composition of the evaluation committee/*júri* as well as its authority to assess bids and qualify competitors according to selection criteria laid down in competition documents and make recommendations of contract award. The public contracts legal regime⁶⁸ lists the competent authorities to approve and sign public contracts and sets out a mix of powers and responsibilities of the Public Procurement Authorities relating to the provision, implementation and management of policy advice on public contracts, signing and administration of contracts, handling contractual claims, and wider record keeping and reporting functions. For infrastructure projects supported by the Infrastructure Fund, the Infrastructure Manual

⁶⁷ DL 14/2011 and A.42 MoF Organic Law.

⁶⁸ A.6 DL 11/2005.

clearly sets out the responsibilities of procuring entities, including in Responsible, Accountable, Consulted, Informed (RACI) matrices.

190. **Procuring entities are required to establish a designated, specialized procurement function** with the necessary management structure, capacity and capability. The organic law of the 8th Constitutional Government⁶⁹ (DL 14/2018) and each organic law of each government agency identify procurement as one of the functions of the respective government agency. The Decree Law on Administrative Organization of Ministries/Government⁷⁰ (DL 30/2020), applying to both direct and indirect state administration, provides for segregation of functions and refers specifically to separation of procurement services function from finance and asset management services function. The same decree identifies the procurement service as one of the services in the ministries and requires that the service be proportionate in size with the volume and complexity of the activities undertaken. Within this legal framework, procuring agencies have established 'procurement services' and conduct procurement for contracts below US\$1 million. CNA is in charge of the procurement for contracts above US\$1 million and less when expressly requested. PPL 2022 clearly identifies the procurement function as the 'procurement service' (*serviço de aprovisionamento*), which is the organic unit of the contracting entity responsible for instructing and conducting the provisioning procedures with the necessary management structure, capacity and capability.

191. **Decision-making is delegated based on risk** and the level of delegation is being gradually increased giving more authority to the implementing agencies. The principle of decentralization is expressed in PPL 2005, while acknowledging that some public services may lack administrative and financial competences to lead their own procurements, in which case, the MoF 'procurement service' is obliged to undertake procurement on behalf of those public services'.⁷¹ In practice, public services use this option requesting CNA support. Accountability for decision-making is defined according to the value of contracts.⁷² For approval and signature of contracts, according to PPL 2005 the competence to approve contracts up to US\$1 million belongs to the head of the agency (heads of sovereign bodies, ministers, secretary of state) with competence to delegate. Contracts up to US\$5 million are approved by the Board of administration of the Infrastructure Fund and Human Capital Development Fund, and the Prime Minister (who can delegate) and contracts above US\$5 million are approved by the CoM. PPL 2022 promotes increased decentralization of decision making as it removes the requirement for the Prime Minister and CoM approval for large contracts and encourages further delegation of authority within the procuring agencies. Contracts below US\$500,000 are delegated to the general directors in charge of procurement.⁷³

Substantive or material gap/s

192. **The definition of procuring entities** could be improved through simplification, with the removal of interchangeable terms. This gap has been resolved in PPL 2022.

⁶⁹ Decree Law No.14 of 2018 Organic Law of VIII Constitutional Government.

⁷⁰ Decree Law No.30 of 2020 Organization of the state direct and indirect administration.

⁷¹ A.18 PPL 2005.

⁷² A.15 PPL 2005.

⁷³ A.22 PPL 2022.

Sub-indicator 6(b) Centralized procurement body

Assessment Criteria:

(a) The country has considered the benefits of establishing a centralised procurement function in charge of consolidated procurement, framework agreements or specialised procurement.

(b) In case a centralised procurement body exists, the legal and regulatory framework provides for the following:

- Legal status, funding, responsibilities and decision-making powers are clearly defined.
- Accountability for decisions is precisely defined
- The body and the head of the body have a high-level and authoritative standing in government

Summary of findings

193. **Main strengths.** To reap the benefits of efficiency and economies of scale, Timor-Leste has considered the use of centralized procurement. While the concept of a ‘supply central/body’ for recurrent goods was abandoned, centralized procurement was promoted through the establishment of an agency for health goods procurement (SAMES).

194. **Centralized procurement body for recurrent purchases.** The government considered the establishment of centralized procurement body in PPL 2005, that is, the Supply Central ‘*Central de Fornecimentos do Património*’, but this body was never created. The government, at this stage, does not contemplate creating a centralized procurement body in charge of ‘whole-of-government-procurement’ for the bulk of recurrent goods and services supported by framework agreements. Thus, framework agreements are not identified in either PPL 2005 or PPL 2022 as a procurement option. Centralized procurement, where the actual purchase is made and managed by one central agency seems to be the preferred approach. For instance, drugs and medical equipment are centralized and the government explores the centralized purchase of vehicles. The current practice does not consider the framework agreement approach as one of the procurement tools available.

195. **Centralized procurement of drugs and medical equipment** is carried out by a central medical store, that is the autonomous service for health drugs and equipment (SAMES). SAMES has a special status, being a ‘public institution’ (*instituto público*, IP) within the Ministry of Health in Timor-Leste that enjoys financial, administrative, and patrimonial autonomy. The core functions of SAMES are the procurement, storage and distribution of pharmaceuticals, consumables and medical equipment for the health facilities of Timor-Leste. Its legal status funding, decision making responsibilities and oversight structure (Board of directors and Fiscal Council) are clearly defined.⁷⁴ SAMES has appropriate authority level, resources, and authority to hire expertise. It has benefited from donors’ technical assistance that contributed to strengthening its management capacity. Some operational inefficiencies identified are due to late budget approvals and coordination with the Ministry of Health in charge of needs quantification.

Substantive or material gap/s

196. **The definition of procuring entities** could be improved through simplification, with the removal of interchangeable terms.

⁷⁴ SAMES was established by Government Decree No.2 of 2004 with legal status, funding and decision-making responsibilities set out in Decree Law No. 18 of 2015 Autonomous service for health drugs and equipment [*Serviço Autónomo de Medicamentos e Equipamentos de Saúde*].

197. **Centralized procurement.** The government is not currently pursuing an approach to establish a central body in charge of ‘whole-of-government procurement’ for recurrent procurement supported by framework agreements. Framework agreements are not identified in the PPL (neither 2005 nor 2022).

Table 8: Pillar II Indicator 6: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
6(a) Definition of procuring entities	The PPL 2005 legal framework is not clear/consistent in referencing the procuring entities.	L	The higher-level legislation to clearly define the procuring entities. (Resolved under PPL 2022).
6(b) Centralized procurement body	The government has considered the benefits of establishing a centralized procurement function in PPL 2005 for the commonly used goods but the agency in charge was not established. Framework agreements are not considered.	M	Consider the benefits of establishing a centralized procurement function for the commonly used goods by making use of framework agreements, based on a study and taking into account the experience in other countries (for example, Cabo Verde). While the current approach to centralized procurement offers the benefit of economies of scale at the purchase stage, it creates additional costs with centralized inventory management compared to the case of framework agreements where procurement is done directly by the beneficiary unit on a need basis and at the right time by drawing from the framework agreements negotiated and established centrally.

Indicator 7. Public procurement is embedded in an effective information system

Sub-indicator 7(a) Publication of public procurement information supported by information technology

Assessment Criteria:

The country has a system that meets the following requirements:

- (a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.
- (b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.
- (c) The information system provides for the publication of: procurement plans information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions linkages to rules and regulations and other information relevant for promoting competition and transparency.
- (d) In support of the concept of open contracting, more comprehensive information is published on the online portal in each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).
- (e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format).
- (f) Responsibility for the management and operation of the system is clearly defined.

Summary of findings

198. **Main strengths.** The government has pioneered the [Timor-Leste Budget Transparency Portal](http://www.transparency.gov.tl/) that contains a procurement portal that provides at no cost (partial) information⁷⁵ on procurement opportunities and awards and other useful information (web links to rules and regulations and sample bidding documents) and enables generation of some statistics. Information on procurement opportunities and awards is also accessible in media of wide circulation. Responsibilities for the management of the e-portal is clearly assigned. The stakeholders appreciate the procurement portal role in increasing the transparency in public procurement with about 80 percent favorable opinions in the MAPS survey.

Box 2: Timor-Leste: Transparency portal

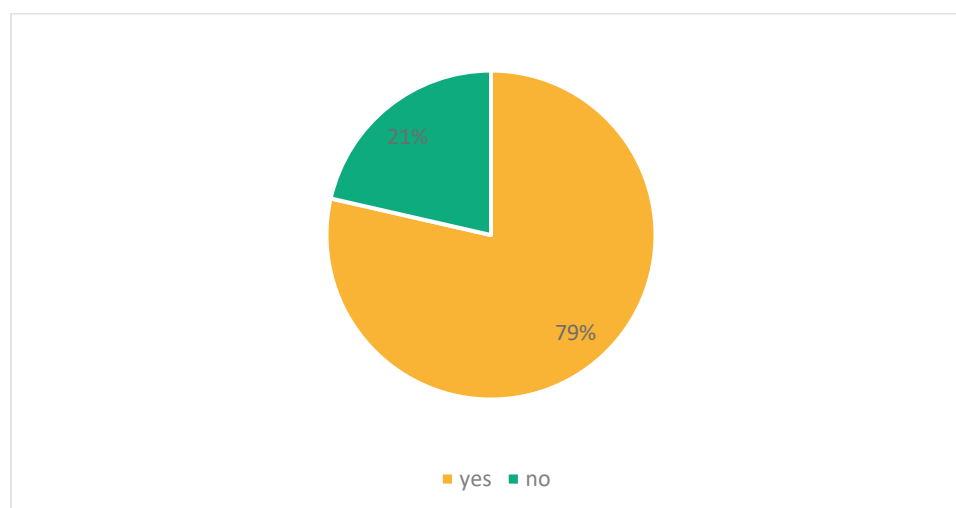
The Transparency Portal (<http://www.transparency.gov.tl/>) integrates the following four portals:

1. The Budget Transparency Portal – Presents data on state budget expenditure, execution and balance, and provides a platform to disaggregate expenditure data;
2. The Aid Transparency Portal – A central repository for all aid information in Timor-Leste that aims to improve aid transparency, accuracy and predictability, and ensure that the assistance provided is efficient and effective;
3. The E-Procurement Portal – Provides information on current tenders, including who was awarded the bid and the value of the contract; and
4. The Government Results Portal – Provides information on the most important government goals, programmes and projects, displaying different information for each target, including its purpose, and physical and financial progress.

Source: Portal de Transparência de Timor-Leste. Available at <http://www.transparency.gov.tl/>.

⁷⁵ As under PPL 2005 publication in the e-portal was not mandatory (hence not complete), it is mandatory now under the PPL 2022.

Figure 8: Procurement portal led to increased transparency



Source: MAPS private sector survey.

199. **Information on procurement is accessible in media of wide circulation and on the online procurement portal but is fragmented and incomplete.** Thus, information on the procurement transactions is limited to tender notifications and awards published in newspapers, national and international (depending on the method used), and on the portal. There is no information regarding the upstream (planning) and downstream (contract implementation) processes. The reliability of the information is not verified by audit. Due to the absence of complete and reliable data, it was not possible during the assessment to obtain/generate the quantitative indicators associated with the availability of procurement information across the procurement cycle. This finding is consistent with PEFA assessment of transparency and public access to public procurement information (PI-24).

200. **A centralized online portal** is accessible, but the information is not comprehensive and up to date, partly because the use of the portal was not compulsory under the PPL 2005. Responsibility for the management and operation of the systems is assigned to GSII GF. The portal comprises information on tenders and awards, provides links to the procurement guides and legislation (though not complete), and contains a few 'examples' of bidding documents. The access to certain web pages containing public information is limited based on registration; the search/filtering function of the system is not user-friendly; and the system does not publish procurement plans, tender documents, appeals decisions, and contract implementation information including amendments and payments. The portal design also includes a page for debarred companies (currently empty). It is noted that PPL 2022 mandates the use of the portal for all open tender and award notifications which may positively affect the consolidation and transparency of the procurement information.

201. **The online procurement portal is not supporting the concept of 'open contracting'** as contract information is not published comprehensively, in a user-friendly format and in an open data machine readable format, that is, the full set of bidding documents, evaluation reports and full contract documents including technical specification and implementation details (milestones, amendments, completion, and payment). The civil society has neither the information nor the capacity necessary to monitor public procurement. There is a need to develop a culture of transparency supported by information and digital tools. To this end, non-state actors, civil society entities, local public oversight champions and others should be mobilized and trained to be able consumers of this information.

Substantive or material gap/s

202. **Procurement information accessibility, completeness, and integration in an online portal to enable third-party monitoring.** Although there is a centralized online procurement portal, its use is not mandatory and therefore the information published is incomplete. Overall, there is a significant gap between what is currently measurable procurement information and the procurement information which needs to be systematically captured, monitored, and reported. Furthermore, the information published is not in the format to enable outside parties to monitor outcomes, results and performance. Some information (for example, awards and statistics) was not accessible to the public at the time of the assessment. The system does not support the principle of “open contracting” and overall, the civil society does not have the information and know-how to monitor public procurement.

Sub-indicator 7(b) Use of e-procurement

Assessment Criteria:

- (a) *e-Procurement is widely used or progressively implemented in the country at all levels of government.*
- (b) *Government officials have the capacity to plan, develop and manage e-Procurement systems.*
- (c) *Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.*
- (d) *Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly dominated by digital technology.*
- (e) *If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment*

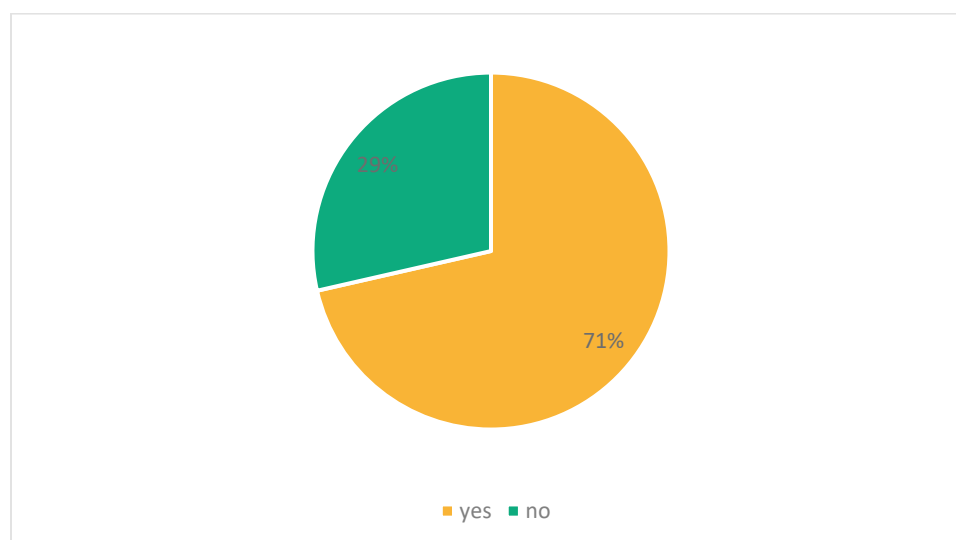
Summary of findings

203. **Main strengths.** Recently, the government considered the benefits of e-procurement and has made relevant provisions in the new PPL 2022 to allow for the future development and use of e-procurement in the country, while acknowledging the need for a gradual transition.

204. **E-procurement is still to be developed.** At this stage, except for the use of the centralized online-portal for publicity, there is no e-procurement system in the country. The government has not launched yet the e-procurement agenda and a readiness assessment and a roadmap are still to be developed. Procurement is carried out mainly through manual processes and there is no information system which provides the minimal electronic procurement functionality including eRegistration, eProcurement Plan, ePublishing/Notification, eTendering/eQuotation and eEvaluation/Awarding. While the current legal framework (PPL 2005) does not contain provisions for e-procurement, PPL 2022 resolved this gap by introducing the concept of e-procurement as instrument to foster efficiency, transparency, and boost competition. The new PPL also requires that tender notifications be published on the electronic platform, identifies as ‘preferred’ the use of electronic means for the clarification process and allows for the use of electronic signature when feasible. Finally, it provides for a transition period until e-procurement is rolled out. Once PPL 2022 becomes effective, the government can launch the e-procurement agenda. More clarity is needed, however, as to the role of various departments in initiating, planning, developing and managing e-procurement in Timor-Leste.

205. The government is aware of the need for a gradual approach to the development of e-procurement considering the connectivity issues, the technological capability and know-how in the country. The private sector expressed its concerns regarding the potential loss of business by MSMEs with 71 percent opining in the affirmative (see Figure 9).

Figure 9: Concerns over the loss of business for MSMEs because of the introduction of e-procurement



Source: MAPS private sector survey.

206. Capacity to develop an integrated e-procurement system. While there is increased capacity in the MoF in developing and using existing e-government systems (GRP/IFMIS/e-budget portal), for the development and management of a comprehensive e-procurement system, there is a significant capacity gap in both the public and private sectors which needs to be filled.

Substantive or material gap/s

207. E-procurement systems and capacity of various actors to plan, develop, manage, and use them are still to be developed. The government is yet to launch the e-procurement agenda and build its capacity in developing and operating an end-to-end e-procurement system. For procurement staff, the capacity gap to move from an e-procurement portal with limited functionality to an end-to-end e-procurement system is significant. So is the private sector companies' capacity gap to participate effectively in the digital public procurement market.

Sub-indicator 7(c) Strategies to manage procurement data

Assessment Criteria:

- (a) *A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-procurement or other information technology.*
- (b) *The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.*
- (c) *The reliability of the information is high (verified by audits).*
- (d) *Analysis of information is routinely carried out, published and fed back into the system.*

Summary of findings

208. Strategies and systems are not yet available to manage data for the entire procurement process to analyze trends, levels of participation, efficiency and economy of procurement and compliance with requirements. At this point there is limited information available, and it is not used to measure the system performance. For instance, the e-portal can generate some information on tenders and awards (limited to the contracts that are published on the portal) while the IFMIS provides information on implementing

agencies, procurement method, number bids received, some process dates and initial contract price. Such procurement information is not verified for accuracy or analyzed routinely to generate indicators that are published and fed back into the system.

209. The MoF database was not up to date at the time of PEFA⁷⁶ (2018) and MAPS assessments and there appears to be large gap of missing data of contracts awarded by the procuring agencies/line ministries, including CNA. The discrepancy is likely due to limited use of the e-procurement portal by procuring agencies/line ministries and the delay in uploading the data into the system. The centralized database is currently unable to provide a complete and reliable record in real time of all the contracts awarded in the country and generate performance indicators to be analyzed by the management for follow-up action. Given the non-availability of complete, up-to-date, and reliable procurement data, at the time of the MAPS assessment, it was not possible to determine the total number and value of public contracts and the share of contracts awarded competitively in Timor-Leste.

Substantive or material gap/s

210. **There is no e-procurement system, nor other system, for systematically collecting and managing data for the entire procurement process** to enable the analysis of trends, levels of participation, efficiency and economy of procurement, and compliance with requirements. The reliability of the information available is low as there is no data audit to ascertain it. There is no information analysis routinely carried out, published, and fed back into the system.

Table 9: Pillar II Indicator 7: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
7(a) Comprehensive procurement information easily accessible including on a centralized portal in open data format.	While tender notifications and awards are required to be published, and they are published in journals and on a centralized portal, their publication is fragmented and incomplete and does not capture procurement plans, tender documents, appeals and contract implementation information. They are not published in an open data format. Access to some pages (for example, awards, statistics) was not public at the time of the assessment.	H	In the short-term, improve the e-procurement portal—completeness, accuracy, timeliness, downloadability, searchability, links to actual bidding documents, and archive older documents. In the medium term, develop an e-procurement system that would enable all procurement Information to be automatically published (ideally in Open Contracting Data Standard- OCDS – format) ensuring timely, accurate and complete procurement information.
7 (b) e-procurement implementation status (for example, widely used, under implementation, planning);	Procurement is carried out mainly through manual processes; e-procurement is neither widely used nor progressively implemented in the country.	M	Conduct a readiness assessment, formulate a strategy that identifies the technical approach, cost estimate, technical and functional requirements, change management and technical assistance required and define an implementation roadmap. Such strategy should take into account the maturity of

⁷⁶ PEFA 24.1 and 24.2

SI	Substantive or material gap Red flag *	Risk	Recommendation
capacity of various actors involved in e-procurement.			the e-GP ecosystem and ensure interoperability with other government systems (such as IFMIS, taxation, business registration). Include in the scope of the e-procurement functionality modules to address red flags, data analytics, contract management, complaints, and citizen access. Finally make sure that the e-procurement design does not raise barriers for SMEs and foreign firms' participation in public procurement.
	There is limited capacity to plan develop, manage, and operate a comprehensive e-procurement system, in both public and private sectors.	M	Develop a change management plan to build capacity for key actors involved (managers, procurement staff, private sector) in developing, managing, and using e-procurement. The new e-procurement system should be promoted to the supplier community (including MSMEs) by providing online training materials and through sensitization methods, so vendors become 'informed users' of the country e-procurement.
7(c) Strategies to manage and analyze procurement data for the entire procurement process	Strategies and systems to manage data for the entire procurement process are not yet available.	H	In the short term develop a mechanism to conduct data analysis based on the information currently available (IFMIS, CNA and other databases) after verifying its quality and completeness. In the medium term, develop a strategy and an e-procurement system which manages data for the entire procurement process to enable its continuous improvement. Key performance indicators (KPIs) to be monitored include competitive versus noncompetitive, number of responsive bidders, duration of the procurement cycle by stage, compliance with legal requirements, contract implementation statistics, mobilization time, number of amendments, and cost and time overrun. The system would allow for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements.

Indicator 8. The public procurement system has a strong capacity to develop and improve

Sub-indicator 8(a) Training advice and assistance:

Assessment Criteria:

There are systems in place that provide for:

- (a) substantive permanent training programs of suitable quality and content for the needs of the system.*
- (b) routine evaluation and periodic adjustment of training programs based on feedback and need.*
- (c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.*
- (d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement*

Summary of findings

211. Main strengths. The government expressed its commitment to building the capacity of the Timor-Leste public service in the SDP 2011–2030 that outlines the need for human resource development including in the area of procurement. To support public agencies in carrying out their functions, the MoF has developed tools to support practitioners (for example, 10 Best Practice Guides), posted some sample/examples of bidding documents on the portal, and assigned CNA to provide advisory services for procurement processes. ADN was assigned to oversee the technical aspects of procurement and provide technical support.

212. Training programs in public procurement. Timor-Leste has not yet put in place a regular training program delivered to procurement staff and other stakeholders consistent with defined competency standards and subject to regular evaluation. While this function was assigned under PPL 2005 to a ‘Procurement Service’, this service was not established, so in practice various entities have provided ad-hoc training. CNA has provided training or hands-on support to procuring agencies on demand and within its resources. The MoF/GPRCGFP has delivered PFM training that includes some procurement training mainly related to the GRP/e-procurement module. The MoF through the PFMO⁷⁷ program has provided training, including in the area of procurement, to municipalities. Finally, a significant share of the procurement training is carried out by IFIs and while it has some relevance to national procurement it focuses on the IFIs procurement policies and procedures. Given its importance of building the quality of the procurement workforce and improving procurement outcomes, developing a training program based on a skills gap inventory analysis, sufficient in terms of content and frequency, appears as a key priority. The urgency is also triggered by the recent 2022 revision of the public procurement legal framework that introduces some substantive changes in the procurement rules.

213. Advisory/help desk function. This function is lodged with CNA which is currently discharging this function. Consistent with the legal and regulatory framework⁷⁸ CNA was assigned the responsibility to provide technical assistance and advisory support in the area of procurement procedures involving amounts up to US\$1 million. It was noted that, for the time being advisory services are confined to government agencies and do not encompass potential bidders or the public. Regarding the technical aspects of procurement, ADN is charged with the review of the technical specifications for civil works

⁷⁷ Partnership for the improvement of service delivery through the strengthening of management and supervision in Public Finances in Timor-Leste/*Parceria para a melhoria da prestação de serviços através do reforço da gestão e supervisão das Finanças Públicas em Timor-Leste*).

⁷⁸ A.3 DL 14/2011.

procurement. Audits of CNA and ADN and interviews identify weaknesses in discharging this function because of resource constraints. Overall, a weak advisory function is diminishing procurement efficiency and outcomes.

214. Capacity-building strategy. A strategy for developing the capacity of key actors involved in public procurement (public and private sectors and CSOs) is still to be developed. The absence of such a comprehensive strategy delays the development of the procurement workforce and the ability to create a critical mass of procurement cadre, hinders the effective participation of the private sector companies to the public procurement market and the ability of the CSOs to oversee the performance of the procurement system. A capacity-building strategy would also address the public sector workforce competency standards and mechanisms for certification and accreditation supporting the advancement toward the professionalization of the procurement function. In addition to ensuring higher quality of staff, these actions have the potential to improve the retention and motivation of procurement staff to help build a more permanent workforce.

Substantive or material gap/s:

215. Substantive, permanent training programs and strategies to develop the capacity of procurement staff. There are no regular training programs suitable for the needs for new and existing staff based on a skill gap inventory in procurement. In the absence of regular training, the supply of qualified staff to the procuring entities is hampered. There is no evidence that training is periodically adjusted based on feed- back obtained through routine evaluation. Finally, there is no procurement strategy to establish a vision and a roadmap for developing the capacity of key actors involved in public procurement.

216. Advisory service/ help desk function for procuring entities, suppliers, and the public. Advisory services on application of policies and procedures are not consistent with demand. The function is hampered by the limited CNA' s capacity, relative to the task at hand, coupled with weak capacity at the procuring agencies' level.

Sub-indicator 8(b) Recognition of procurement as a profession

Assessment Criteria:

The country's public service recognizes procurement as a profession:

- (a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.
- (b) Appointments and promotion are competitive and based on qualifications and professional certification.
- (c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.

Summary of findings

217. Main strengths. The civil service regulations require that recruitment of civil servants including in the area of procurement be competitive and merit based. It also provides for annual evaluation of staff based on performance criteria that are linked to the public agencies' strategic objectives. The anti-corruption law further emphasizes that recruitment should be based on principles of transparency and fairness and appropriate procedures for recruiting in areas that are vulnerable to corruption, such as procurement.

218. Recognition of procurement as a specific function. The public service system does not identify procurement as a professional function with procurement positions defined at different professional levels linked with specific qualifications and competencies. The legal framework (see also Sub-indicator 5 (b)) covers only the training needs and does not address procurement professionalization. To be considered a profession in Timor-Leste, procurement should be subject to a 'special career regime' (*carreira de regime especial*).⁷⁹ Pursuant to this regulation, the creation of the special regime careers must be justified and subsequently approved by the CFP and the CoM. Professionalization of procurement, however, does not seem to be a priority for the moment. This is also confirmed under the new PPL 2022 that addresses only the capacity building of procurement staff, function that is assigned to CNA.

219. Appointments and promotions are governed by the civil service regulations⁸⁰ that support merit and continuous improvement. They provide that competitive recruitment is based on qualifications criteria that include general and specialized knowledge and experience and are based on a written test and interviews. Fixed-term consultants are often recruited to complement the civil service workforce. Their recruitment follows a legal regime for fixed-term employment⁸¹ that provides for open and competitive procedures but also allows for direct selection from a short list of qualified candidates. The selection results are published in the official bulletin (*Jornal da Republica*).

220. Two cross-cutting challenges affect procurement staffing. One is the high dependence on fixed-term consultants which is detrimental to consolidating a sustainable procurement workforce; thus, despite increased awareness of the need to build sustainable capacity of the civil service and to limit outsourcing (as outlined in the Infrastructure Manual), not much progress was made, and consultants/staff ratio may be as high as 80 percent. Another challenge is the high staff turnover, also related to the fact that appointments are often driven by the political cycle as there are frequent changes of procurement staff once there is a change in the administration. The CAC baseline survey 2019⁸² states

⁷⁹ Special career regimes are governed by Decree Law No. 27 of 2008 (General Career Regime of the Public administration) [*Regime das Carreiras e dos Cargos de Direcção e Chefia da Administração Pública*], as amended.

⁸⁰ Decree Law No.34 of 2008 on the Regime for competition, recruitment, selection and promotion of the public administration personnel, as amended.

⁸¹ Decree No.6 of 2015 Legal Regime of Fixed-Term Employment Contracts in Public Administration.

⁸² CAC, UNDP, 2019, Final Report on Baseline Survey for Supporting National Anti-Corruption Strategy

that political patronage and influence over staff appointments may create a politization of the public service with a resulting impact on technical capacity.

221. **Staff performance evaluation** is well covered under the legal framework but not consistently practiced. Staff performance evaluation is governed by the civil service regulations,⁸³ and requires that civil servant's evaluation be annual, confidential, based on specific criteria that are linked with the agency objectives and subject to appeal. Fixed-term consultants, consistent with the legal regime applicable⁸⁴ are evaluated based on the performance indicators in their terms of reference and work plan. However, based on opinions collected from public agencies interviewed and information provided in the Infrastructure Manual, there are no actual mechanisms to enforce the staff evaluation requirement and the staff evaluation is sporadic.

Substantive or material gap/s

222. **Procurement recognition as a specific function.** Procurement is not categorized as a specific function with procurement positions identified in the country public service and linked with defined competences. Nor are there other mechanisms to assess and certify the level of competence of procurement workforce (such as accreditation and certification), and this negatively affects the staff motivation, performance, and retention.

223. **High turnover of procurement staff and reliance of fixed-term consultants.** While there are stringent rules for recruitment and promotion, procurement staff is often replaced once new management is appointed with a new political cycle. Hence, the staff turnover is quite high and undermines capitalizing on capacity-building efforts. Coupled with the excessive use of fixed-term consultants, this hinders the creation of a sustainable procurement workforce in Timor-Leste. The system does not allow for the development of a critical mass of procurement cadre. While professionalization remains a longer-term goal, developing and stabilizing the workforce in procurement is a more immediate goal. This gap is allocated a red flag because it cannot be immediately mitigated through actions in the public procurement systems; addressing this gap requires the involvement of the Public Service Commission. The other reason is the fact that outside factors (e.g., political cycle) can significantly impact the staff tenure.

224. **Staff performance evaluation and development.** There is a comprehensive regulatory framework for staff performance evaluation, but it is not consistently enforced to monitor the quality of performance and link it to professional development and promotions.

⁸³Decree Law No.14 of 2008 on the Regime for evaluating the performance of civil servants, as amended.

⁸⁴ A.33, Decree 6/2015.

Sub-indicator 8 (c) Monitoring performance to improve the system

Assessment Criteria:

- (a) *The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.*
- (b) *The information is used to support strategic policy making on procurement.*
- (c) *Strategic plans, including results frameworks, are in place and used to improve the system.*
- (d) *Responsibilities are clearly defined.*

Summary of findings

225. **Main strengths.** financial progress of major contracts under the Infrastructure Fund is monitored and published in the Budget Book. A GIS database for the Infrastructure Fund has been developed to visualize the project information, location, and the financial records on the map for better monitoring.

226. **Performance management system for procurement/contract management.** Comprehensive monitoring performance mechanisms in public procurement including contract management are still to be developed. Currently, there is no procurement monitoring mechanism based on performance indicators at the agency/national level. Regarding contract implementation, the MoF captures the progress of contracts in financial terms in its annual budget documents. However, there are no other indicators for contract implementation such as physical progress, time and cost overrun, number of amendments, payment time, that would provide a more complete picture of the contracts' financial and physical progress and quality of implementation.

227. **Data on procurement processes** are not collected and analyzed systematically, and hence there is no information to support strategic policy making in procurement. Policy making is typically informed by discussions with practitioners and lessons from experience. The procurement portal contains some statistics on the tendering notices and awards and IFMIS contains limited information on the procurement cycle (see Sub-indicator 7c(a)), but there is no evidence that this information is captured, analyzed and used to assess the operation of the procurement systems and support strategic policy decisions.

228. **Strategic plans, including results frameworks,** are not in place and used to improve the system. This MAPS exercise has developed a strategic plan to guide the reform processes in Timor-Leste that covers the legal, institutional, implementation, oversight and integrity aspects of public procurement.

229. **Responsibilities in the area of performance monitoring** are not clearly defined (see also Sub-indicator 5(b)(d)). Under PPL 2005 this function is assigned to the MoF Procurement Service which has not been established. The MoF Organic Law provides that CNA is the central service of the MoF responsible, among others, for monitoring and assisting technically all public entities in in the area of procurement for contracts for "other procedures". More clarity is needed in assigning this function comprehensively.

Substantive or material gap/s

230. **Performance measurement system that informs policy formulation and strategic plans is missing.** While there are some statistics that can be generated from the procurement portal and IFMIS – the country has not established and consistently applied a performance measurement system to support improvements in the operations of the procurement systems and policy formulation. There are no strategic plans to structure reform initiatives to improve public procurement outcomes nor a results framework to monitor the implementation of the planned reforms. Responsibilities for performance monitoring are not clearly defined. Monitoring performance is essential to improve procurement

outcomes. A red flag is raised as this gap cannot be mitigated immediately through actions in the procurement system as it requires cross institutional efforts, at the central (line ministries, ADN, IFMIS) and local level (local government) to develop and implement it and make best use of the information it provides to improve the system.

Table 10: Pillar II Indicator 8: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
8(a) and 8(b) Training programs/advisory services of suitable quality based in a strategy; procurement recognized as a specific function; merit-based procurement HR policies.	While there is a strategic plan (SDP 2011–2030) that identifies the need for capacity building in procurement, to date there is no procurement strategy and a permanent training program in public procurement. Procurement is not recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified. Advisory function is weak and cannot meet the demand.	M	Strengthen the capacity of the public procurement workforce and develop a roadmap for public procurement professionalization: <ul style="list-style-type: none"> • Develop a capacity-building and training strategy with consideration of all stakeholders' needs and permanent and substantive training programs and materials in the area of procurement based on a robust training need assessment (TNA) exercise. • Create a 'pool' of procurement trainers. • Roll out e-learning courses on public procurement including contract management to enable quick 'intermediate' certification of public procurement workforce. • Develop a roadmap for certification and professionalization of the procurement function. • Use e-learning and build partnerships with education centers and academia to reach out to a broader range of stakeholders, leverage existing resources and create a sustainable capacity-building framework. Strengthen the ability of CNA and ADN to provide advisory services.
	*While there are clear rules for recruitment and promotion, procurement staff is often replaced once new management is appointed with a new political cycle. Fixed-term	H	Stabilize and strengthen the procurement workforce by securing tenure in civil service, build civil servants' capacity, and hire fixed-term consultants only for highly

SI	Substantive or material gap Red flag *	Risk	Recommendation
	consultants are extensively used which is not conducive to build a robust workforce of civil servants in public procurement. Performance evaluation is not consistently enforced.		specialized areas; emphasize merit including through performance evaluation.
8(c) Monitoring performance to improve the system.	*There are no comprehensive monitoring mechanisms to monitor procurement performance at the agency/national level and no data are collected and analyzed systematically to inform the procurement policy to support strategic plans with results frameworks. Responsibility is not clearly assigned at the national level.	H	Develop a strategy and mechanisms for collecting, managing data and monitoring procurement KPIs at the agency and national levels, to be analyzed and fed back into the procurement systems to improve outcomes. Establish clear responsibilities.

3.3. Pillar III - Public Procurement Operations and Market Practices

Summary of Pillar III

231. This summary for Pillar III presents an overview of the analysis discussed in this chapter. The analysis is drawn from further detailed information in the Indicator Matrix at Volume II.

232. **Procurement planning** is generally supported by preparing procurement plans based on needs assessment tools but market research /engagement are not typically part of the procurement planning of high-risk/high-value contracts or of contracts in areas where the market has not been tested to support effective planning. It was noted that the new PPL 2022 has strengthened the procurement planning and the requirement regarding market engagement.

233. **Some sustainability considerations** are used in the bidding process and reflect the national priorities particularly those related to mitigating the negative impact of capital investments on the environment, developing the local market and promoting the transfer of knowledge and innovation. They are not comprehensive (see also Pillar I, indicator 3 for legal context) and the impact of these actions is not assessed periodically to fine-tune the sustainability tools available and improve procurement outcomes.

234. **Bidding documents.** A few examples of good-quality bidding documents are posted on the procurement portal modeled after the IFIs' standard documents. They are however in English, but knowledge of the English language is quite low. Both the procuring entities and the private companies could benefit from a set of bidding documents in Timor-Leste official languages, for use in procurement procedures which are conducted in official language/s, standardized where possible, aligned with the Timor-Leste procurement legal framework that is in force, proportionate to the needs and covering a wide range of procurement approaches.

235. **Procurement process.** The assessment of the procurement practices has revealed some weaknesses in the enforcement of PPL 2005. They include the lack of justification of the less competitive methods, leakage of confidential information, lack of transparency in evaluating criteria, and deficient award notifications.

236. **Contract management.** Weak contract planning, and management are compounded by lack of regular supervision of civil contracts and lack of information to support performance monitoring. Civil society does not normally participate in various stages of the procurement process. Finally, inadequate maintenance of procurement records is an integrity risk and hampers proper oversight.

237. **The public procurement market.** While the government is using public procurement to leverage private sector development, there are no clear formal mechanisms of interaction, including transparent and consultative process in public procurement and no programs to build private sector' capacity in this area. Private sector companies are organized in associations and local companies actively compete in the construction sector where they are awarded most of the contracts (95 percent in number, 68 percent in value).⁸⁵ Nevertheless, private sector surveys reveal constraints to their effective participation in the

⁸⁵ Asian Development Bank, 2019 Construction Market Analysis.

public procurement market which include weak capacity, limited access to credit, corruption and, last but not least, political instability.

238. **Key sectors and sector strategies.** Procurement supports strategic sectors of the government such as infrastructure and health through special institutional arrangements. A more proactive approach should be used in these priority sectors to assess systemic procurement risks and opportunities to better support the sectors' development objectives.

Indicator 9. Public procurement practices achieve stated objectives

Sub-indicator 9(a) Procurement planning

Assessment Criteria:

- (a) *Needs analysis and market research guide a proactive identification of optimal procurement strategies.*
- (b) *The requirements and desired outcomes of contracts are clearly defined.*
- (c) *Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money*

Summary of findings

239. **Main strengths:** Needs analysis is part of the procurement and budget planning, and market research is sometimes used in feasibility studies for complex contracts under the Infrastructure Fund. Consistent with the provisions in the legal framework (see Sub-indicator 3(a)(c)), the bidding documents have sustainable features such as the use of price and non-price attributes to pursue value for money and consideration in the evaluation process of life-cycle cost as well as social, economic, and environmental criteria.

240. **Needs analysis and market research.** Needs analysis is part of budget preparation and procurement planning. While market research may be part of the feasibility study of some large infrastructure projects, market research/engagement is not part of the procurement strategic planning of other high-risk, high-value contracts, or contracts in areas where the market has not been tested. The Chamber of Accounts (*Camara de Contas*, CdC) audit identifies the lack of market research as a reason for the overestimated contract value that may result in overpriced bids.⁸⁶ Market research and engagement techniques should be increasingly used. Such techniques will support the selection of 'fit-for-purpose' procurement approaches by identifying among others, the appropriate market segments likely to participate to maximize competition and the participation of responsive bidders. The Best Practice Guide # 1 succinctly addresses market research as part of the 'Procurement Strategic Planning' and should be further developed and made part of the training programs for procurement and technical staff. PPL 2022 has strengthened the provisions regarding the market engagement by stating that as part of the preparation of the procurement plan, contracting entities may carry out market consultations, with the aim of obtaining information on market conditions, in relation to the goods, services or works they intend to contract. It also underscores that those preliminary consultations are not binding on the contracting entity or entities consulted.

241. **The definition of requirements and desired outcomes** of contracts could be strengthened. Contracts have multiple amendments (see Sub-indicator 9c) which can be partly attributed to poor procurement planning. Audit reports cite (a) contracts where no bids were received because specifications did not reflect the market realities; (b) bidding documents where "trade names" were used restricting

⁸⁶ CdC has identified a correlation between overestimated contracts and overpriced bids.

competition; (c) contracts that underwent significant changes in the scope of works and monetary value during implementation; (d) vague requirements that have an impact on the market response and comparability of bids; and (e) requirements that do not envisage the maintenance cost and may affect the value for money objective. ADN underscores the weaknesses in the technical specifications that should be supported in certain cases by feasibility studies and the importance of qualified technical staff in the line ministries. It is notable that ADN has acquired relevant experience in supervising the quality of technical designs and technical specifications and managing public contracts. A recent law DL 60/2020 transformed ADN in a public institution with more autonomy and emphasizes its function to promote, in coordination with the relevant entities, the development of training and qualification programs in architecture, engineering, and supervision of works.

242. Sustainability requirements/criteria. There are cases when sustainability requirements/criteria that reflect the national priorities are incorporated in the planning process, for instance: (a) environmental and social studies for complex procurement contracts; (b) set aside contracts to support the local industry; (c) commitments by foreign bidders to develop local capacity, transferring technology and promoting innovation; and (d) other criteria related to job creation, purchasing of goods and services locally, provision of opportunities for regional and district development. They are not based, however, on a strategic approach, and there are no implementation instructions for practitioners to support their effective use.

Substantive or material gap/s

243. Strategic procurement planning. Strategic planning through market research/engagement is generally limited to a few large projects under the Infrastructure Fund as part of the feasibility studies and is typically not included in other high-value/high-risk projects and lower-value contracts where the market conditions are uncertain, in order to support sound procurement approaches and cost estimates, robust technical specifications, and realistic timelines.

244. The requirements and desired outcomes of contracts. There are weaknesses in the definition of technical specifications as signaled by audits and ADN that negatively affect the procurement process and contract implementation. Procuring entities lack qualified technical staff. ADN itself does not have the capacity to adequately supervise the quality of specifications for public works in the Timor-Leste procurement.

245. Use of sustainability criteria. Sustainability criteria are used in more complex procurement processes, but they are not comprehensive, based on a strategic approach and market analysis, supported by guidance to ensure they are applied in a balanced manner.

Sub-indicator 9(b) Selection and contracting

Assessment Criteria:

- (a) *Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.*
- (b) *Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.*
- (c) *Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.*
- (d) *Procedures for bid submission, receipt and opening are clearly described in the procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.*
- (e) *Throughout the bid evaluation and award process, confidentiality is ensured.*
- (f) *Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.*
- (g) *Contract awards are announced as prescribed.*
- (h) *Contract clauses include sustainability considerations, where appropriate.*
- (i) *Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.*
- (j) *The selection and award process is carried out effectively, efficiently and in a transparent way.*

Summary of findings

246. **Main strengths.** The public procurement framework has provisions for balancing quality and cost to achieve value for money in procurement through evaluation techniques, including the use of multistage processes.

247. **Multistage procedures** are used for complex procurements to ensure that only qualified and eligible participants are included in the competitive process. In addition to procurement with prequalification, the procuring entities use a two-envelope approach where eligibility and qualifications are assessed in the first stage before opening the financial proposal to ensure that only qualified and eligible candidates are chosen to compete based on price. Similarly, for the selection of professional services, the Request for Proposals for Consulting Services, entails a two-stage evaluation: (1) evaluation of technical proposals; followed by (2) public opening and evaluation of financial proposals. While the MAPS standard is substantially met, the process can be improved (see Sub-indicator 9(f)) by providing more transparency on the disclosure of rated criteria.

248. **Bidding documents.** A few examples of good-quality bidding documents are posted on the procurement portal that are inspired by IFI's standard bidding documents. They are only in English which may restrict effective participation of bidders except for large contracts. Therefore, one of the priorities is for the government to prepare an entire suite of bidding documents, for various levels of complexity consistent with the legal framework in the country official/working languages and to make them available to the entire public in the procurement portal. PPL 2022 has introduced more clarity on the responsibility for this important procurement function and charges the CNA with the task of standardizing procedures and the issuing of guidelines, model documents and templates among others.

249. **Procurement methods.** While PPL 2005 requires that the procurement procedure be justified, the assessed practices revealed that the method is not always chosen, documented and justified in compliance with the legal framework. This is confirmed by CdC audit reports that draw attention to the fact that methods chosen are often not justified particularly for the less competitive methods including

direct contracting. This practice opens the door to abuse and does not ensure that the most appropriate approach is selected to meet the expected outcomes, considering the context, the risk, value, and complexity of the contract.

250. **Procedures for bid submission, receipt and opening** are clearly described in the procurement documents (submission, sealing and marking, deadline for bid submission, late bids, withdrawal substitution and modification of bids and bid opening) and are generally complied with. The PPL 2005 does not prohibit representatives of the public from attending the bid opening but civil society monitoring of bid submission, receipt and opening is not a practice.

251. **Confidentiality during the bidding process** is supported by appropriate clauses in PPL 2005 (see Sub-indicator 1 f(e)) and the bidding documents. In practice, since the conflict of interest is identified as an issue in Timor-Leste and there are few effective safeguards so far, there is a strong likelihood that confidentiality is not always ensured. In fact, perception surveys have confirmed that maintaining confidentiality during procurement process is a challenge. Thus, the 2019 CAC Baseline Survey identified preserving the confidentiality of information as one of the key vulnerabilities, including leaking information to potential bidders adding that there are not yet sufficient rules, regulations, and enforcement of the rules on conflict of interests to mitigate this risk that is more likely to occur in a country with a small population/market.

252. **Techniques and criteria to support best value for money.** Tools such as rated criteria, and the two-envelope systems are used to support balancing quality and cost and achieving value for money in procurement. However, bidding documents typically do not include the weightings of various criteria and it is noted that there is no legal requirement to disclose this information. This makes the process less transparent, and bidders are not informed on how the procuring entities value various aspects of the offer to guide them in preparing more responsive bids.

253. **Announcing contract awards.** While contract awards are generally published, as prescribed, in journals and the procurement portal, they do not contain the level of information required under PPL 2005,⁸⁷ that is, to lay out the reasons for awarding to the preferred candidate and informing about the opportunity to complain within a certain period. This undermines transparency and integrity of the system and the enforcement of the challenge mechanism.

254. **Sustainability clauses in contracts.** Complex contracts, typically subject to international competition, contain some sustainability requirements related to environment, knowledge transfers, job creation, and sourcing of goods from the local market. According to audit reports, there is no information on the achievement of the related contractual requirements and if objectives are attained.

255. **Incentives for performance in contract clauses.** While contract clauses provide for disincentives for poor performance, they do not provide incentives for exceeding defined performance levels. PPL 2022, however, introduces the concept for incentives for exceeding defined performance levels that has the potential to incentivize contractors to deliver more effectively on their commitments and this needs to be captured in the updated bidding documents.

⁸⁷ A.89 PPL 2005 stipulates the obligation to advertise the intention to award the contract in the same place where the tender announcement was made and requires also stating succinctly the reasons for the award. A.96 PPL 2005 provides that it should also contain a statement on the right to complain within a certain time frame.

256. **Selection and award process.** The Assessment Team was not able to assess most of the quantitative indicators on the selection and award process due to lack of access to quality and complete procurement process data. Some data were available on competition and bid submission time in the CNA data set. On average 6 bids are received (the most are for NCB) and about 50 percent are found responsive. By category, works contracts receive the greatest number of bids (6.7 on average) but the number of responsive bids is not much different than for the other categories. Bid submission time is on average 51 days (slightly higher than the 45 planned).

Table 11: Competition by procurement method

Procurement Method	Bids received	Responsive bids	%
ICB	5.79	3.05	53
NCB	8.36	2.77	33
RFQ	3.25	2.50	77
RFP	6.17	2.96	48
RT	6.13	2.54	41

Source: CNA data set.

257. **Procurement methods and process.** There are no reliable statistics to determine the share of competitive methods in total country procurement, at the national or agency level. Over the last five years or so, CdC audits have raised issues such as the abuse of direct contracting without justification, bids with higher prices than in the private market, evaluation criteria not clearly defined in the bidding documents, companies not qualified to carry out the works because of deficiencies in the certification/registration process of civil works and consulting companies,⁸⁸ and notification of intention of award lacking essential information.

Substantive or material gap/s

258. **Procurement documents appropriate to the needs.** While the procurement portal provides a few examples tailored to specific cases they are in English (not generally understood by most local vendors) and are modeled after the IFIs standard procurement documents (which may be too complex for lower-value contracts).

259. **Justification of the selection of a less competitive method** is typically not documented as confirmed by audits.

260. **Ensuring confidentiality.** Given the high risk for conflict of interest and the fact that mechanisms for enforcement are still to yield results, there is a strong likelihood that confidentiality is not always ensured as confirmed by perception surveys.

261. **Appropriate techniques to determine best value for money.** While tools such as rated criteria and life cycle cost are used to support balancing quality and cost and achieving value for money in procurement, typically bidding documents do not disclose this information to ensure transparency in the evaluation and enable more responsive bids.

⁸⁸ Decree Law No. 27 of 2010 Legal regime governing the certification and registration of civil construction and technical consulting companies.

262. **Publicity of contract awards.** Generally, notifications of contract awards are published in journals or on the procurement portal as required.⁸⁹ However, they do not contain the level of information required under the PPL, that is, the reasons for awarding to the preferred candidate and informing about the right to complain within a certain time frame.

263. **Contract clauses with performance related incentives.** There are no incentives for exceeding performance levels under PPL 2005. This gap was resolved under PPL 2022.

264. **Sustainability clauses are incorporated typically** in more complex contracts. However, not all types of sustainability considerations are included in contractual clauses (this gap stems from the legal framework; see Sub-indicator 3(a)). Furthermore, in the absence of close supervision and performance monitoring and reporting on these aspects, there is no information on how/if the sustainability objectives are implemented and their impact.

Sub-indicator 9 (c) Contract management

Assessment Criteria:

- (a) *Contracts are implemented in a timely manner.*
- (b) *Inspection, quality control, supervision of work and final acceptance of products is carried out.*
- (c) *Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.*
- (d) *Contract amendments are reviewed, issued and published in a timely manner.*
- (e) *Procurement statistics are available, and a system is in place to measure and improve procurement practices.*
- (f) *Opportunities for direct involvement of relevant external stakeholders in public procurement are utilized.*
- (g) *The records are complete and accurate, and easily accessible in a single file*

265. **Contract implementation.** While the government monitors the financial implementation of public works contracts, no national statistics are available on the contract implementation to measure performance. The contract sample from MoPW shows an average contract implementation time of 620 days in 2018, slightly higher for works, that is, 670 days. The median contract value is about US\$100,000. There are no statistics, however, to substantiate the time overrun. Significant time seems to be consumed on final acceptance as confirmed by interviews and the MAPS private sector survey, which adds to the contract implementation time and delays decisions on payments to the contractors and final acceptance of works. It is noted that Timor-Leste benefits from a practice guide for contract implementation management. However, it is in English, which impedes the dissemination and the usage of the guide.

266. **Inspection and quality control:** Contract supervision is the weakest link in public procurement and hinders the attainment of investment projects' outcomes. Audits underscore the fact that the majority of the public works are not properly supervised. The 2019 Infrastructure Fund audit report states that dozens of contracts related to the *Estradas* program, which include, for example, the urban road contracts of significant value, were not subject to inspection. The responsibility for supervision lies with the MoPW and ADN. It appears that the agencies in charge do not have the capacity to cover such a large program and ADN typically reviews works done at the time of payment which cannot be a substitute for proper, regular supervision. Lack of supervision affects the quality of contract implementation; adds to

⁸⁹ A.89 PPL 2005 stipulates the obligation to advertise the jury decisions on the intention to award the contract in the same place where they made the tender announcement. A.96 PPL 2005 requires also stating succinctly the reasons for the award. that should also contain a warning on the right to complain within a certain time frame.

the contract implementation time, and, reportedly, inspection disagreements account for a significant time share of contract implementation. These weaknesses underscore the importance of good contract strategic planning at the line ministry levels, with adequate budget provision for supervision and timely recruitment of supervisors so they are on board when the contract is signed. It is also noted that there are some gaps in the legal framework in this area (for example, monitoring contract delivery, inspection quality control or supervision, or monitoring of contract performance clauses designed to ensure social or environmental standards) that are described under Sub-indicator 1(i).

267. Examination of the invoices and payment time. The internal controls/chain of authorization for payments and approval of the expense voucher has been delegated to the ministry level and municipalities, and hence the MoF Treasury does only the payment; the Infrastructure Fund has its own treasury to facilitate prompt payment. However, delays are reported in payment for works contracts and final certification may take a long time in the absence of regular supervision and reportedly there are inefficiencies in the circulation of documents from one approval authority to the other. The ADB Construction Market Analysis of December 2019 mentions that based on the construction firms feedback the delays in payments of construction contracts are a major impediment. Such delays could be from 3 months up to a year in certain cases, but they typically take 6 months.

268. Contract amendments review and publication: Contracts amendments are not published and there are frequent contract amendments with changes in monetary value and often substantive changes in the technical specifications, as signaled by audit. The MoPW data set shows 70–80 percent of 2018–2019 contracts are amended. A deficiency identified during audits is that some procuring agencies use amendments to avoid a new competitive process and it is noted that unit prices may be significantly higher in the amended contracts. For instance, the auditors point out to fuel contracts of sizable amounts awarded through addenda that resulted in a significant increase over the original competitively awarded contracts.⁹⁰ Other amendments relate to the revision of contracting and subcontracting arrangements. Sometimes contracts are awarded to ‘front’ companies ‘*empresas de fachada*’ who win the contracts based on their credentials and then subcontract or transfer the contract.⁹¹ It was noted, however, that the new PPL 2022 has strengthened the rules for sub-contracting and transfers.

269. Availability of procurement statistics: Except for limited data in the procurement portal, and IFMIS (see Sub-indicator 7(c)), statistics on the procurement processes, including contract management, are not available nor are there systems to analyze the data to measure and improve procurement and contract management practices. There is no clear assignment on the responsibility to collect these statistics (see Sub-Indicator 5 (b)).

270. Opportunities for direct involvement of relevant external stakeholders: Currently, according to the regulatory framework⁹² external stakeholders could participate in bid opening but there is no evidence that this is a practice. Stakeholders are not involved in the other stages of the procurement process (for example, in the planning phase for consultation, in contract award as observers, and/or in contract management for monitoring). This deprives the public procurement of feedback from stakeholders and opportunities to improve procurement practices. PPL 2022 improves on PPL 2005, by

⁹⁰ *Camara de Contas* 2021, Fuel audit.

⁹¹ *Camara de Contas* 2019, Infrastructure Fund audit.

⁹² A.78 PPL 2005 stipulates that any person interested can attend the public act, where no interventions from those present are allowed.

including a provision for the civil society to be invited to be part of the evaluation committee in projects with significant social impact that involve resettlements.⁹³

271. Records' completeness and accuracy: There are norms for maintaining safekeeping records, documents and electronic data but there are no established security protocols to protect records, physical and/or electronic (see Sub-indicator 1k). Auditors frequently note that not all documents are available for audit. In particular, when multiple agencies are involved, for example in the Infrastructure Fund operations, documents are not always available in one place and auditors have to solicit this information from multiple agencies which reportedly delays the audit process.

Substantive or material gap/s

272. Contracts' implementation. Contract planning is weak, there are no contract planning strategies for complex contracts, and there is no information on contract time and cost overrun which weakens the ability of the managers and citizens to monitor contracts.

273. Inspection, quality control, supervision and final acceptance. Inspection and supervision are not carried out regularly and therefore, final acceptance may take a long time. Thus, works contracts are typically not subject to regular supervision and most of the inspection is carried out by ADN at the payment time. Supervision is essential to positive contract outcomes. This gap is allocated a red flag because strengthening inspection and supervision cannot be immediately mitigated through actions only in the public procurement system. ADN involvement is also required, and budget be made available for this purpose.

274. Invoices' examination and payment. While payment procedures and approvals are clear, payments take time, mostly because of the certification process that does not rely on regular supervision and reportedly is quite bureaucratic.

275. Contract amendments' review, issuance and publication. There are frequent amendments and there are no requirements that amendments should be published, which, if done, would increase transparency and public oversight, including over the use of amendments to avoid open competition.

276. Procurement statistics. Comprehensive and reliable procurement statistics (at the agency and/or country level) are not available nor are mechanisms to analyze them to improve the systems.

277. Opportunities for direct involvement of relevant external stakeholders. No cases have been identified for the involvement of external stakeholders in the procurement process even in the bid opening phase where there are no limitations to public participation in PPL 2005.

278. Records completeness. Records are not complete particularly for procurement activities where multiple agencies are involved in the procurement process (for example, when procurement is conducted by CNA and procurement planning/contract management by other government agencies). The records are typically fragmented and scattered among the various agencies and are sometimes difficult to obtain.

⁹³ A.53 PPL 2022 Evaluation committee nomination – provides for the participation of the civil society in projects involving resettlement

Table 12: Pillar III Indicator 9: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
9(a) Procurement planning based on needs analysis and market research and clear contractual (including sustainability) requirements.	Key gaps in procurement planning are the following: (i) market research is not mainstreamed for high value/high risk contracts or contracts in areas where the market has not been tested; (ii) there are weaknesses in the design of specifications; (iii) the use of sustainability requirements is not comprehensive or based on the market analysis.	M	Mainstream market research/engagement to support realistic procurement approaches, cost estimates, and technical specifications. Update and disseminate the Best Practice Guide No. #1 and include it in procurement training.
9(b) Selection and contracting based on procurement documents with clearly described procedures to support the efficiency and integrity of the process.	<p>The sample of bidding documents posted on the-procurement portal is limited and generally modeled after the IFIs which are complex for small value contracts. Procurement documents are in English which diminishes their practical use.</p> <p>Justification for the use of less competitive method is not always documented.</p> <p>Confidentiality is a recognized challenge given that, among others, the mechanisms for preventing conflict of interest are not yet effective.</p> <p>The price/quality ratio is not identified in the bidding documents which limits the transparency of the process and value for money proposition as bidders are not informed how the procuring entity values different criteria.</p> <p>Awards do not contain the level of information required by the PPL (for example, the reasons for the award and reminder on the right to complain within a certain time frame).</p>	M	<p>Develop an adequate range of standard/sample bidding documents in the official language/s including in Tetum, aligned to the legal framework, for use in procurement procedures which are conducted in official language/s, to increase efficiency and participation in the bidding process. The best practice guides need to be also aligned with the new legislation, translated in the official languages, and incorporated in the training programs.</p> <p>Strengthen the internal controls for procurement with SOPs/ manuals and training that focus on procurement control issues.</p> <p>Enforce conflict-of-interest self-declaration requirements under the anti-corruption law including for members of the <i>júri</i> and appeal commissions.</p> <p>Improve model documents, best practice guides to make explicit the need for disclosing the rated criteria and the weights applied. This is also a topic for the training program</p> <p>Develop a template for awards' notification to include all the elements required to improve transparency.</p>

SI	Substantive or material gap Red flag *	Risk	Recommendation
	<p>Not all types of sustainability considerations are included in contractual clauses and there is no monitoring on how they are applied in practice.</p>		<p>Expand the use of sustainability criteria based on a strategic approach and monitor their implementation.</p>
<p>9(c) Contract management: Timely effective implementation. (Quality control Payment time Contract amendments Statistics availability Stakeholders' involvement Records completeness).</p>	<p>Contracts' strategic planning is not embedded in the contract preparation.</p> <p>*Inspection and supervision are not carried out regularly. Works contracts are typically not subject to daily supervision and most of the inspection is carried out by ADN at the payment time.</p> <p>Amendments are frequent, and not published and not always subject to CdC approval when they bring the total contract value above US\$5 million.</p>	<p>H</p>	<p>Improve contract planning and develop contract strategies for complex contracts based on market research and engagement.</p> <p>Mainstream regular supervision in the contract implementation process and provide for budget and timely appointment/selection of supervising entities.</p> <p>The best practice guide on contract implementation No. # 7 to be updated, translated in a relevant official or/and working language disseminated, and included in the procuring agencies SOPs and training. (see also general recommendation under 2(d)).</p> <p>Develop a robust training program in contract management for both public and private sector. Further strengthen</p>

SI	Substantive or material gap Red flag *	Risk	Recommendation
	<p>While there are payment procedures, payments take time because of the certification process which does not rely on regular supervision and because of a bureaucratic approval process.</p> <p>Consistent and reliable procurement statistics are not available. Responsibility not clearly assigned.</p> <p>There is no evidence that stakeholders are involved in any of the stages of the procurement cycle.</p> <p>Records, particularly for those where multiple agencies are involved, are not complete and accessible in a single file to allow for effective audit.</p>		<p>CNA and ADN that have important capacity-building functions of the entire system.</p> <p>Address root causes of payment delays, including strengthen supervision to reduce the time for the payment certification process and, streamline the circulation of documents.</p> <p>Develop a system to collect, process and monitor key procurement statistics (for instance starting with the procurement under the Infrastructure Fund).</p> <p>Include provisions in the procurement legal framework to allow civil society participation in various stages of the procurement process.</p> <p>Develop instructions/Best practice guide for record management and incorporate in the procuring agencies' SOPs and in training programs.</p>

Indicator 10. The public procurement market is fully functional

Sub-indicator 10(a) Dialogue and partnerships between public and private sector

Assessment Criteria:

- (a) *The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government.*
- (b) *The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.*

Summary of findings

279. **Main strengths.** In its strategy, the government underscores the importance of supporting the development of a strong private sector and the establishment of new businesses and industries that are essential to create jobs and enable the transition to a non-oil economy. To this end, the government played a key role in the establishment of the Chamber of Commerce whose objective is to support the development of the local industry including SMEs. Finally, the government is using procurement as a tool to support the development of the national companies through special procurement techniques and requirements.

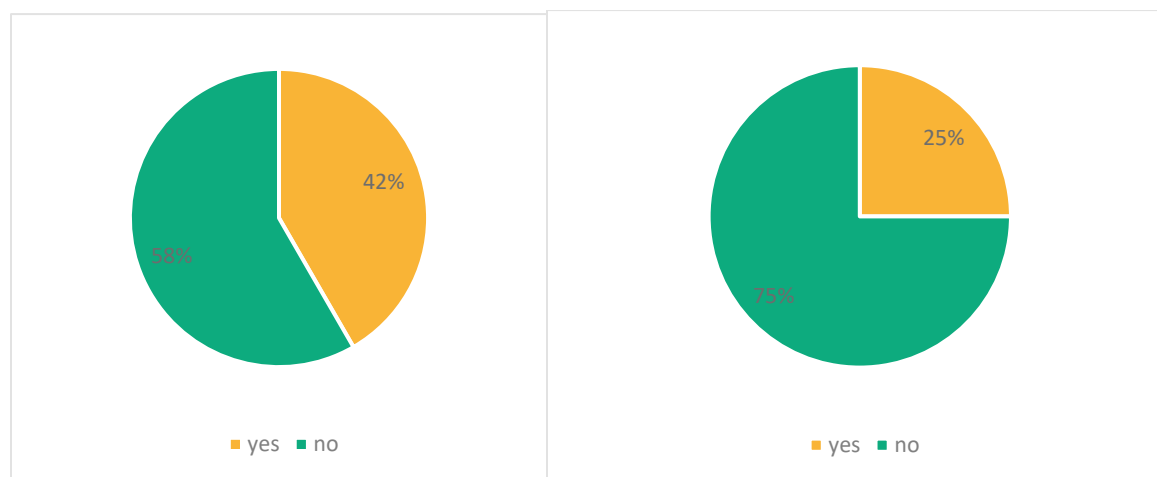
280. **Mechanisms to support private sector and dialogue.** Public procurement plays an important role in the development of the Timorese private sector through set aside contracts for national contractors⁹⁴ including under PDID and evaluation techniques that support the selection of bidders whose proposals promote job creation, transfer of capacity and technology, purchases of goods and services acquired locally and opportunities for regional and district development. In April 2010, the government helped with the creation of the Chamber of Commerce,⁹⁵ whose responsibilities include developing the businesses capacity, providing advice, facilitating micro-companies access to assistance and training. It was underscored that the Chamber of Commerce and Industry will function as a partner to carry out the government's strategies in the area of private sector reform. The Chamber of commerce interacts with the government on various issues that are supportive of the private sector agenda (for example, certification of bidders, national preferences).

281. **Open dialogue with the private sector.** The Chamber of Commerce intermediates the dialogue between the government and the private sector. It is currently involved in the registration and certification of contractors jointly with the MoPW and has lobbied for allowing increased access to public works contracts for national contractors. There is however no dialogue with the private sector when formulating changes to the public procurement system. For instance, the private sector has not been involved in the development of the new procurement policy PPL 2022. According to the MAPS private sector survey 58 percent of the respondents state that there is no communication on the changes in the procurement legal framework. Around 75 percent of the respondents indicate that they do not have access to changes in the procurement framework through the website and have difficulties in finding the required procedural information.

⁹⁴ The legal framework reserves participation in competition for contracts equal to or below US\$100,000 to domestic participants or companies with majority domestic ownership PDID- procurement regime in Decree Law 11/2013 reserves award of contracts up to US\$500,000 to national companies.

⁹⁵ Source : <http://timor-leste.gov.tl/?p=2672&n=1&lang=en>

Figure 10: (a) Government communicates with the private sector on changes in the procurement legal framework and (b) Access to these changes and procedural information



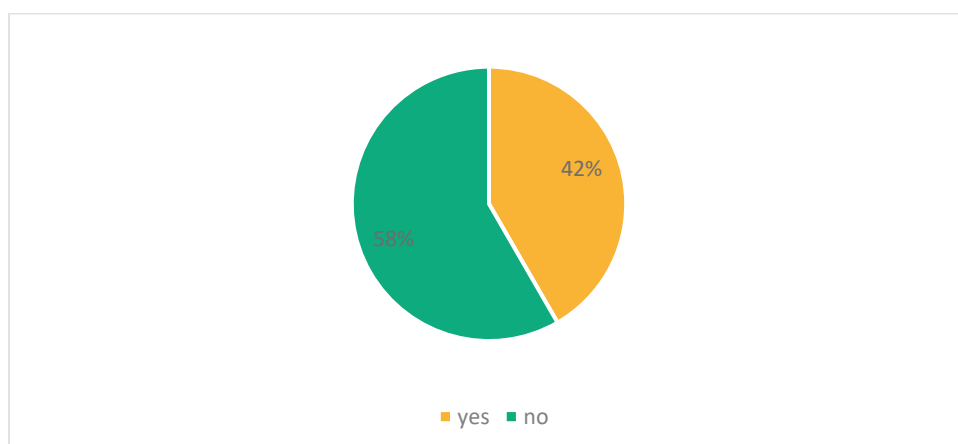
Source: MAPS private sector survey.

282. Building the procurement capacity of the private sector. Although the government is using the public procurement policy to promote the local private sector development (for example, through preference systems) and there are some capacity-building programs for the private sector (for example, supported by ILO⁹⁶), there are no such programs in public procurement for local private companies, to help them participate more effectively in competitive procurement and enable new entries into the public procurement market. The ADB Construction Market Analysis⁹⁷ survey revealed that local vendors have difficulty in understanding the bidding and contract documents, which prevents them from offering bids of good quality. There is a dearth of training opportunities in public procurement; only 42 percent are aware of training programs in procurement, some organized by donors. Training is needed to enable local companies (including MSMEs) to efficiently identify tender opportunities, understand the bidding documents, the contractual requirements, and the evaluation mechanism to enable them to prepare responsive bids, use the challenge mechanism and preserve the integrity of the process. The Chamber of Commerce is currently proactively engaged in discussions with the development partners to attract funds for the capacity building of private sector companies.

⁹⁶ ILO Decent Work Country Program (DWCP) for Timor-Leste, includes building the capacity of local training institutions, construction companies and government and central and local authorities responsible for public works in rural areas (source: The ILO in Timor-Leste, 2019).

⁹⁷ Asian Development Bank, 2019 Construction Market Analysis

Figure 11: Awareness of the private sector on training programs/information sessions



Source: MAPS private sector survey.

Note: This may combine the government and development partners' training.

Substantive or material gap/s

283. **Government formal mechanisms for dialogue with the private sector.** There is no consultative process when formulating changes to the procurement legal framework.

284. **Programs to build the capacity of the private sector.** There are no regular programs to build the capacity of the private sector in public procurement and help new entries into the public procurement marketplace.

Sub-indicator 10(b) Private sector's organization and access to the public procurement market

Assessment Criteria:

- (a) *The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts.*
- (b) *There are no major systemic constraints inhibiting private sector access to the public procurement market*

Summary of findings

285. **Main strengths.** The Timorese private sector is organized in associations and is active particularly in the public works arena where it is the main beneficiary of the capital expenditures funds that are mostly channeled through the Infrastructure Fund.

286. **Private sector capacity and organization.** Compared to firms in the East Asia and Pacific (EAP) region, the average firm in Timor-Leste is younger, smaller (in terms of the number of employees), less capital intensive, and has lower labor (and total factor) productivity levels.⁹⁸ In Timor-Leste public procurement is an important source of revenue for the private sector and local companies benefit from preferences to support their development. According to the ADB 2019 Construction Market Analysis the construction market in the country is dominated by the government. The private sector is organized in about 19 associations along the area of activity of their members (for example, construction, fish, coffee, consultants) of which about 5 are contractors' associations. The Chamber of Commerce and Industry of Timor-Leste (CCI-TL) (see Sub-indicator 10 (a)) is the umbrella association established to support the

⁹⁸ 2019, World Bank, Timor-Leste economic report unleashing the private sector.

development of the private sector in general including the MSMEs capacity through advice assistance and training. It is notable that one of the private sector associations supports the participation of women in government contracts: *Asosiasaun Emprezarial Feto Timor-Leste* (AEMTL).

287. **The competitiveness of the public procurement marketplace** and participation of local bidders depend on the nature of the tender. The local private sector is competitive particularly for works contracts. Overall, (as per the CNA sample of contracts) the number of bidders is about six of which 50 percent are responsive. Local companies actively compete in the construction sector that captures most capital expenditures. It is noted that local contractors and consulting companies are dominant both in terms of total number and value of contracts (see Figures 12 and 13). As expected, the average value of the contract is higher for foreign contractors US\$2 million and US\$306,000 for local contractors. Regarding the number of registered and active suppliers to the government, in 2020 there were 2,576 active suppliers (that received payments) in the IFMIS, including 1,131 fixed-term consultants that supplement the civil service workforce. The total registered number of suppliers is quite high comparatively (60,610) but this includes the entire population of suppliers since 2001 so it is not a true reflection of the today's number of potential suppliers. The value of the contracts awarded to domestic and foreign firms is not available in IFMIS.

Figure 12: Awards to local/foreign contractor in the construction industry

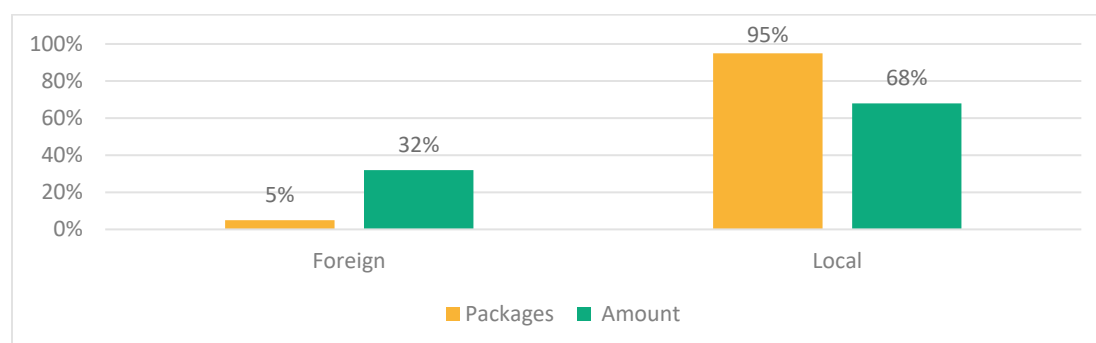
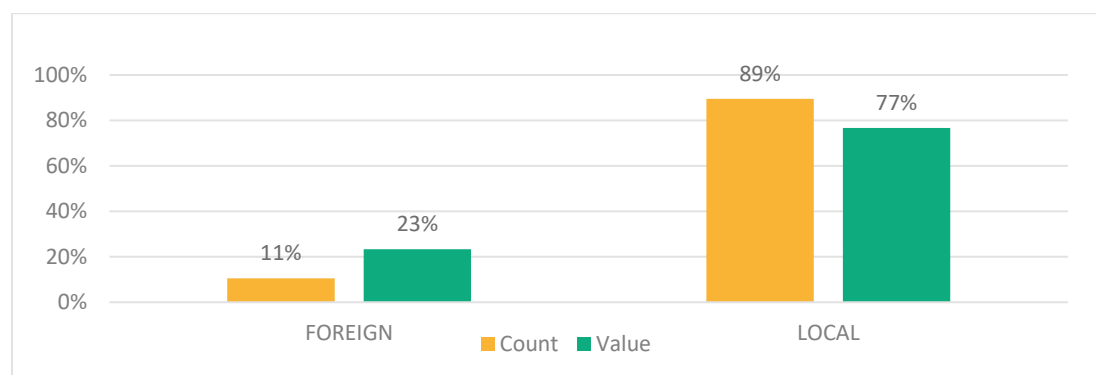


Figure 13: Awards to local foreign consultants in the construction industry

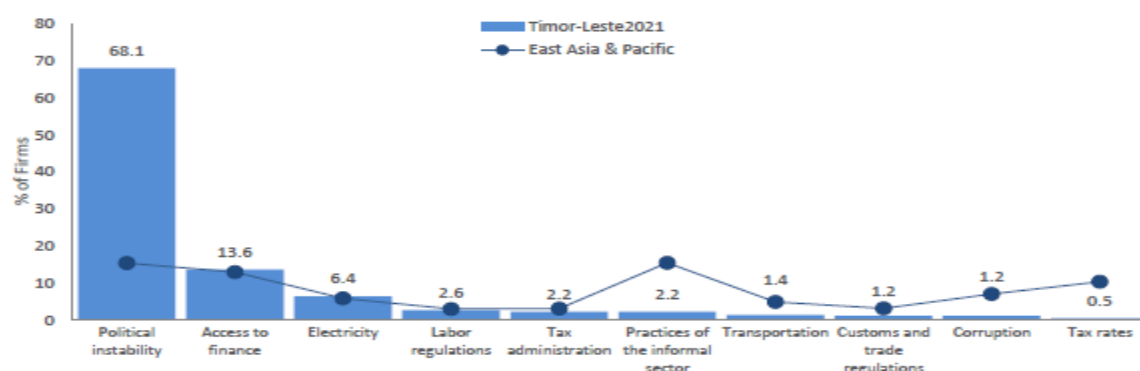


Source: ADB Construction Market Analysis 2019.

288. **Systemic constraints** continue to inhibit private sector effective access to the public procurement market. The assessment, based on private sector surveys has identified some key constraints that limit the effective participation of the private sector in public procurement. Some broad constraints are identified under the Enterprise Survey; political instability is cited as the highest constraint for the private

sector. In addition, poor electricity and water services, cumbersome import and business regulations, and low workforce skills and education levels have all been associated with weaker firm performance.⁹⁹

Figure 14: Top 10 business environment constraints



Source: World Bank, Enterprise Survey 2021.

289. **Constraints specific to public procurement** identified through interviews, surveys and other sources include the following:

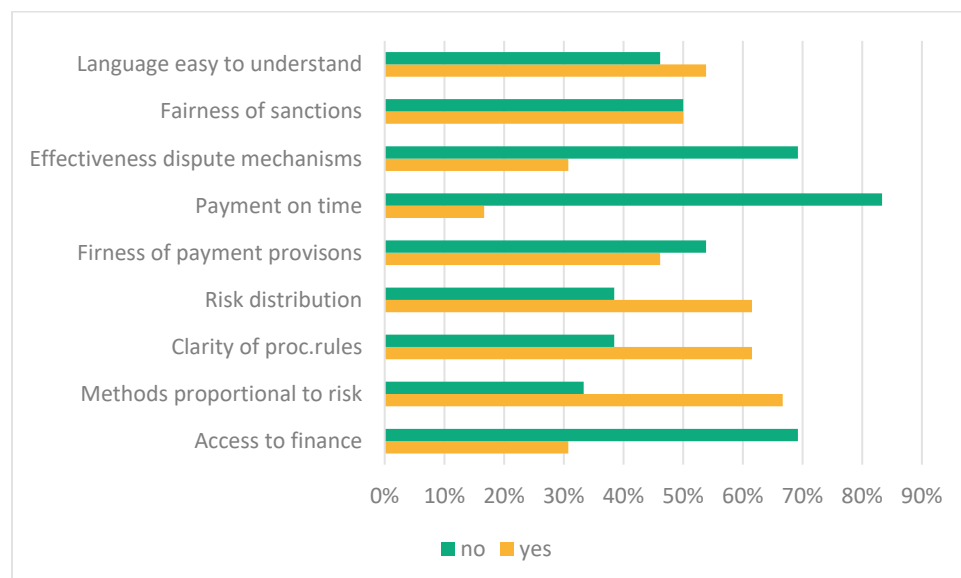
- **Difficulty in understanding the content of the bid and contract documents** that follow the development partners' standards documents and are often complex relative to the size of the contract and in English, which prevents private companies from offering good quality bids.¹⁰⁰ The MAPS private sector survey has revealed that 46 percent of the respondents took issue with the language of the bidding documents, while about 80 percent preferred that bidding documents be in a different language than only English, mostly Tetum. An additional hindrance is the technical specifications and scope of work that is often not clearly defined.
- **Unclear procurement rules and unfair risk distribution.** While the majority provided a positive answer, about 40 percent of respondents to the MAPS private sector survey declared that procurement rules are not clear; and about 40 percent opined those contractual risks are not fairly distributed
- **Concerns about the effectiveness of the dispute and fairness of sanctions mechanisms** were raised by 69 percent and 50 percent respectively of the participants. Other private sector concerns, as revealed by the MAPS private sector survey and interviews, are related to the existence of conflict of interest (see Sub-indicator 5(d)) and the lack of trust in the complaints/appeal mechanisms (see Sub-indicator 14(b)).
- **Access to financing.** The majority (69 percent) of the respondents identified access to financing as a systemic constraint, pointing to high interest rate and the collateral required typically real estate/land. There are problems with access to working capital for contracts above US\$250,000, as the bank regulations are more stringent. Sometimes procuring entities accept a letter of support from a commercial bank.

⁹⁹ World Bank 2019 Timor-Leste economic report unleashing the private sector.

¹⁰⁰ Asian Development Bank, 2019 Construction Market Analysis

- **Delays in payment.** Around 54 percent state that the payment provisions are not fair and more than 80 percent report delays in payments as the rule, that is more than 30 days beyond the contractual terms.

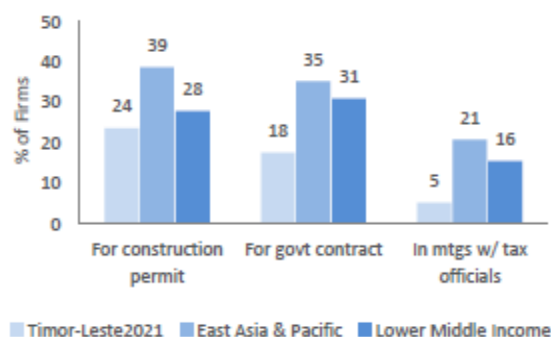
Figure 15: Private sector perception of public procurement constraints



Source: MAPS private sector survey.

290. **Corruption and bribe requests.** According to the Enterprise Survey 2021, while Timor-Leste ranks lower in incidence of bribery than other countries in the region, there is an expectation for firms to give gifts to operate (import license, operating lease, construction permit) and receive basic services such as electrical and water connections. The MAPS private sector survey indicated that more than 60 percent considered that gifts are necessary to secure government contracts.

Figure 16: Percentage of firms expected or requested to give gifts or informal payments



Source: World Bank, Enterprise Survey, 2021.

Substantive or material gap/s

291. **Private sector capacity.** While the private sector is organized in associations and is willing to participate in the public procurement market, particularly in civil works, its capacity is weak.

292. **Systemic constraints to private sector participation in procurement.** There are systemic constraints inhibiting private sector access to the public procurement market. They include difficulty in understanding the content of bidding documents including technical specifications, access to financing, bribe requests and other factors in the business environment (for example, political instability, cumbersome import and business regulations, electricity shortages, and low workforce skills and education levels). Such constraints affect private sector participation, engagement and performance with negative impact on the procurement outcomes. This gap is allocated a red flag because some of the gaps identified cannot be immediately mitigated through actions only in the public procurement system. It requires a concertation of policies and actions at the Government and business associations level.

Sub-indicator 10(c) Key sectors and sector strategies

Assessment Criteria:

- (a) *Key sectors associated with the public procurement market are identified by the government.*
- (b) *Risks associated with certain sectors and opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.*

Summary of findings

293. **Main strengths.** Two sectors rank high on government agenda as reflected in SDP 2011–2030, that is, infrastructure and human capital development. In these sectors, procurement and contract management have special arrangements to support the government objectives.

294. **Key sectors associated with public procurement.** For most infrastructure contracts, procurement takes place under the Infrastructure Fund, an autonomous fund, endowed with legal personality, and administrative, financial, and patrimonial autonomy. Under the Infrastructure Fund, CNA is the key procurer, and SGP is in charge of the PIM process and oversees the technical quality in the bidding and contract implementation process. Procurement of pharmaceutical and health goods is conducted by SAMES, whose core function is the procurement, storage and distribution of pharmaceuticals, consumables, and medical equipment for the health facilities of Timor-Leste. It is a public institution that enjoys a special procurement regime and financial, administrative, and patrimonial autonomy.

295. **Existing initiatives.** While there are no comprehensive/up to date assessments of procurement systemic risks and opportunities that influence these sectors' markets, the Assessment Team has identified sectoral studies that address procurement, to various degrees. For instance, the 2020 Infrastructure Fund Manual addressed procurement in the context of the Infrastructure Fund framework and the 2015 Health Study focused on procurement in the health sector with procurement specific recommendations. There are other studies, including from development partners such as the 2019 ADB Construction Market Analysis and World Bank PER 2021. The latter focuses on the health sector and offers a few valuable insights into some of the procurement challenges.

Substantive or material gap/s

296. **Risks and opportunities associated with priority sectors.** The approach to these markets to assess procurement risks and opportunities is not consistent; studies are not regularly updated to identify systemic risks and inform policy decisions.

Table 13: Pillar III Indicator 10: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
10 (a) The government encourages open dialogue with the private sector and supports its capacity building.	<p>There are no consistent mechanisms of interaction between the government and the private sector including transparent and consultative process when formulating changes to the procurement legal framework.</p> <p>There are no programs to build the capacity of the private sector in public procurement.</p>	M	<p>Promote regular interaction between the government and the private sector (for example, procurement conferences, Q&A e-platforms). Involve the private sector in the amendments to the PPL and other procurement initiatives.</p> <p>Government to develop in cooperation with the private sector associations and relevant education institutes sustainable training programs to be delivered to the private sector to increase their chances of participating successfully in the public procurement market.</p>
10(b) Private sector organization and major systemic constraints inhibiting access to the public procurement market.	*There are some major systemic constraints inhibiting private sector access to the public procurement market. They include payment delays; difficulty in understanding the content of the bidding documents including technical specifications; cumbersome access to finance, bribe requests, and other factors in the business environment.	H	Engage the private sector to understand their constraints to find ways to address them and facilitate private sector companies access to the public procurement market.
10(c) Key sectors associated with procurement – assessment of risks and opportunities to support policy objectives.	The approach to assessing systemic risks and opportunities in these markets is not consistent to effectively inform policy decisions.	M	Proactively assess these sector markets through a periodic update of such sectoral studies with focus on procurement to identify the risks and opportunities and improve procurement outcomes to better support the sectors' development objectives.

3.4. Pillar IV Accountability, Integrity and Transparency of the Public Procurement System

Summary of Pillar IV:

297. This summary for Pillar IV presents an overview of the analysis discussed in this chapter. The analysis is drawn from further detailed information in the Indicator Matrix at Volume II.

298. **Civil society engagement.** Timor-Leste civil society is organized and there are examples of CSOs/NGOs providing feedback on draft laws, including the budget law. However, no consultative mechanism is followed when formulating changes to the public procurement system and there are no programs in place to build relevant stakeholders' capacity to understand, monitor and improve public procurement. While there is a central portal for procurement information, it is not user-friendly, and some information is restricted and/or incomplete (awards) and other is not captured at all (contract implementation information, debarred bidders and appeals); this hinders adequate and timely access to information by stakeholders (private sector and civil society) as a pre-condition of effective participation.

299. **Public procurement oversight.** While Timor-Leste has established a comprehensive control framework, it is still weak, particularly in internal controls/audit, because of limited resources and difficulty in retaining qualified staff. Except for the implementation of recommendations under the State General Account Audit, there are no public records to capture the follow-up on audit findings. There are legal requirements for cooperation among oversight agencies to facilitate coordinated auditing, but this is yet to become a regular practice. While external audit has a strong procurement component, both internal and external audit would benefit from audit manuals with guidance for procurement audit and regular training programs with procurement content.

300. **Appeal mechanism** is not efficient. The bodies competent to consider an appeal are not guaranteed sufficient independence of the procuring entity. There is no information on how the system is enforced and there are no central records of procurement appeals to assess its enforcement.

301. **Integrity systems.** Timor-Leste has established a comprehensive legal and institutional anti-corruption framework by adopting a modern anti-corruption law and establishing CAC. The legal framework provides for mechanisms to prevent and mitigate conflict of interest and other prohibited practices through asset declaration, beneficial ownership disclosure, cooling-off period, self-declaration of conflict of interest, and debarment. Progress was achieved in the 2022 rollout of asset declaration and registration of more than 22,000 civil servants and family members. The other mechanisms are still to be implemented.

Indicator 11. Transparency and civil society engagement strengthen integrity in public procurement

Sub-indicator 11(a) Enabling environment for public consultation and monitoring

Assessment Criteria:

- (a) A transparent and consultative process is followed when formulating changes to the public procurement system.
- (b) Programs are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.
- (c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.

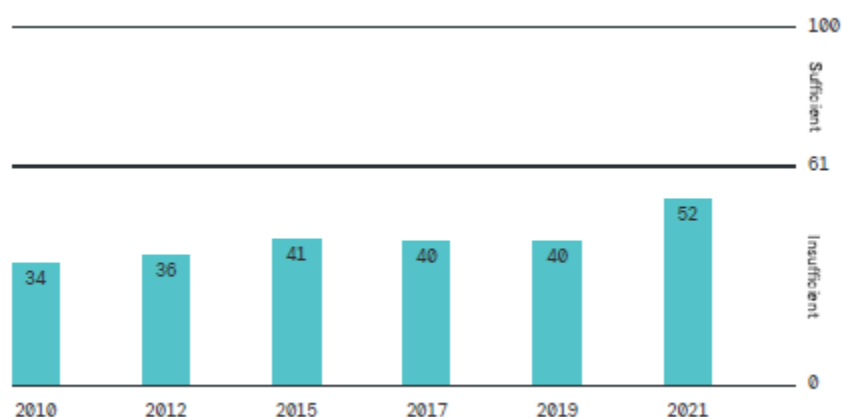
Summary of findings:

302. **Main strengths.** There are legal provisions allowing citizens' participations and CSOs may attend Parliamentary hearings when the budget law is debated.

303. **A consultative process in formulating changes in the public procurement system.** While there are examples of citizens/CSOs providing feedback on draft laws (land, mining, budget, and anti-corruption) a consistent transparent and consultative mechanism is not followed when formulating changes to the legal and regulatory framework of the public procurement system. The assessment did not identify instances/evidence of civil society participation in the development of the new PPL 2022. Overall, there is no evidence of how the government takes into account the inputs, comments and feedback received from civil society. Finally, there are no government programs to build the capacity of relevant stakeholders to conduct effective third-party oversight in public procurement.

304. **Metrics for transparency and public participation in Timor-Leste.** The graphs below (Figure 17 and 18) provide metrics gauging budget transparency and public participation. Based on the OBS scale, the trend in the area of transparency is positive, with Timor-Leste advancing from 40 in 2019 to 52 in 2021. However, the current score of 52 (out of 100) is considered insufficient.¹⁰¹

Figure 17: Trend in OBS Transparency Score for Timor-Leste

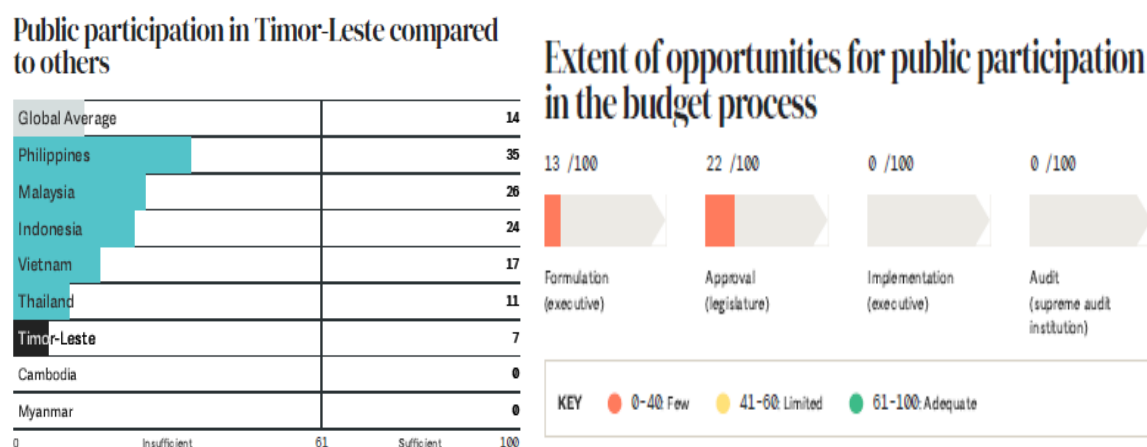


Source: The OBS index for Timor-Leste: OBS 2021 <https://www.internationalbudget.org/open-budget->

¹⁰¹ OBS: A transparency score of 61 or above indicates a country is likely publishing enough material to support informed public debate on the budget.

305. The OBS also assesses the formal opportunities offered to the public for meaningful participation in the different stages of the budget process and scores each country on a scale from 0 to 100. Timor-Leste scores 7, half of the global average, and among the countries in the region, it ranks the lowest except for Cambodia and Myanmar that score zero. Hence, opportunities for public participation in the budget process are characterized as “limited”, as illustrated in Figure 18, below.

Figure 18: OBS- public participation in Timor-Leste



Source: OBS index for Timor-Leste: OBS 2021 <https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste>

Substantive or material gap/s

306. **Consultative process.** There is no consistent transparent and consultative mechanism followed when formulating changes to the public procurement system. For instance, PPL 2022 was not subject to public consultation. Overall, there is no evidence of how the government takes into account the input, comments and feedback received from civil society.

307. **Programs to build the capacity of relevant stakeholders.** There are no programs in place to build relevant stakeholders’ capacity to understand, monitor, and improve public procurement.

Sub-indicator 11(b) Adequate and timely access to information by the public

Assessment Criteria:

(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.

Summary of findings

308. **Main strengths.** The public can obtain some information on the procurement legal framework through the procurement portal and media of national circulation where procurement opportunities and other related information are published. The anti-corruption law has specific provisions to boost transparency and third-party oversight in public procurement, which is identified by CAC as an area of high risk.

309. **There are legal requirements to ensure publicity of procurement opportunities and awards** in both PPL 2005 and the anti-corruption law. However, the level of information required is limited compared to the MAPS standard and there are some deficiencies in enforcement as further detailed. The government agencies are mandated to publicize the tender notifications on the central procurement portal or in a journal of national circulation (refer to Pillar I Sub-indicator 1c/a). The anti-corruption law emphasizes the principle of publicity and transparency during both procurement and contract implementation to discourage corrupt practices and foster social scrutiny of the processes and parties involved.¹⁰² However, awards are not accessible to the public and when published they are not complete as they do not provide the reasons for selecting the successful bidder and the time frame for appeal, as per the PPL. The centralized portal does not include procurement plans, bidding documents, debarred bidders, data on resolution of appeals or contract and aggregated key procurement performance statistics (for example, procurement lead time, average number of bids including responsive, competitive versus less competitive procurement). There is no information published in the portal related to contract progress, financial and physical, although this is required as part of the budget execution process. The procurement portal is not user-friendly in terms of downloadability, searchability, and links to actual bidding documents. Public access is limited.

Substantive or material gap/s

310. **Stakeholders access to information** is hindered because information is scattered across various media and the procurement-portal is therefore incomplete and not user-friendly. This impedes an adequate and timely access to information by stakeholders as a pre-condition of effective participation.

Sub-indicator 11(c) – Direct engagement of civil society

Assessment Criteria:

- (a) *The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring).*
- (b) *There is ample evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.*

Summary of findings

311. **Civil society participation in procurement.** PPL 2005¹⁰³ stipulates that ‘any person interested can attend the public act’ of opening the envelopes but is silent on the option of allowing citizens to participate in the other phases of the procurement process, as appropriate: (a) the planning phase (consultation); (b) evaluation and contract award (observation), when appropriate; and (c) contract management and completion (monitoring). PPL 2022 expands on the participation of civil society in contracts of strategic interest, high value, or great social impact.

Substantive or material gap/s

312. **Citizens’ participation in various stages of the procurement cycle.**

¹⁰² A.7 Anti-corruption law 7/2020 (publicity and transparency in public procurement).

¹⁰³ A.78 PPL 2005.

With one exception (that is, bid opening), PPL 2005 is silent regarding the participation of civil society in other stages of the procurement process. This limits the opportunity of public procurement oversight by civil society. Overall, there is no evidence for direct participation of citizens in procurement processes.

Table 14: Pillar IV Indicator 11: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
11 (a) Consultative process when formulating changes to the public procurement system and feedback taken into account. Programs to build the capacity of stakeholders are in place.	No cases have been identified for civil society participation in the regulatory process for public procurement. There are no programs in place to build relevant stakeholders' capacity to understand, monitor and improve public procurement.	M	Create a mechanism for public consultation to solicit feedback from the civil society/private sector in developing procurement legislation and formulating changes to it. Publicize the comments and how they have been addressed. Develop and include in the capacity-building strategy and agenda training programs for CSOs so they can exercise effective oversight of public procurement.
11 (b) Adequate and timely access to information by the public	Information in paper media is scattered and, on the e-procurement website, is incomplete, not in real time, and not user-friendly which hinders adequate and timely access to information by stakeholders as a pre-condition of effective participation. There are limitations to public access.	M	Improve the procurement portal – completeness, accuracy, timeliness, downloadability, searchability, and links to actual bidding documents. Expand public access to information (for example, awards).
11(c) Requirement for engagement of civil society in various procurement phases supported by evidence.	Currently, citizens' participation is allowed only in the bid opening stage and there is no evidence of their participation.	M	Consider allowing the participation of citizens in various stages of the procurement process: <ul style="list-style-type: none"> the planning phase (consultation) bid/proposal opening, evaluation and contract award (observation) contract management and completion monitoring

Indicator 12. The country has effective control and audit systems

Sub-indicator 12(a) Legal framework, organization and procedures of the control system

Assessment Criteria:

The system in the country provides for:

- (a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies.
- (b) internal control/audit mechanisms and functions that ensure appropriate oversight of procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations.
- (c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation.
- (d) independent external audits provided by the country's Supreme Audit Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management.
- (e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance).
- (f) clear mechanisms to ensure that there is follow-up on the respective findings.

Summary of findings

313. **Main strengths:** Timor-Leste has established the legal and institutional architecture for the oversight of the use of public funds through internal controls, internal and external audits and oversight by legal bodies. The external audit has a good coverage of procurement and in addition to regular audit, CdC conducts procurement prior review for large contracts.

314. **The Timor-Leste control framework,** while it is comprehensive, does not have the capacity to fully cover the needs of the Timor-Leste government including in public procurement. In spite of the progress achieved, PEFA 2018 concludes that there are some weaknesses in the oversight systems that hamper the effective and efficient delivery of budget outcomes. The oversight system components are described below.

Internal controls and audit

315. **An internal control/audit** regulatory and institutional framework has been developed. The internal control arrangements are described in the MoF Organic Law, in the organic law approved for each ministry and the annual budget execution decree. The arrangements are further detailed in the GRP FreeBalance system and the Treasury Manual. The main internal control bodies are:

- (a) **MoF General Inspection Office, Gabinete de Inspeção-Geral (GIG)** which is in charge of conducting the internal audit of the financial and assets management activities in all organic units legally dependent on the MoF, and other institutions. GIG is also charged with defining internal audit/inspection procedures. GIG reports to the Minister of Finance on the results of the audits or inspections conducted; and
- (b) **State General Inspectorate, Inspeção Geral de Finanças (IEG)** performs inspection and auditing functions. The IEG reports directly to the Prime Minister. Its expertise extends over internal control of central services and deconcentrated public entities but according to PEFA, it has essentially been focused on inspections and investigations.

316. The internal audit function is increasingly being established in government agencies. However, it is not fully operational, and its tasks are not effectively carried out because of limited resources and difficulty in retaining qualified staff. For example, the MoF develops and audit program annually, but plans are adjusted to limited capacity and resources constraints. Because of resources constraints, the level of implementation of the annual plan is on average 43 percent (see Table 15 with the level of implementation broken down per categories of activities).

Table 15: Internal audit fulfilment of annual plan

Activities	Planned	Actual	% fulfilment
Audits	4	1	25
Inspections	6	2	33
Investigations	3	2	67
Follow-up audit	1	1	100
Total	14	6	43

Source: Assessment Team based on MoF statistics.

317. Overall, and consistent with PEFA¹⁰⁴ findings, the internal control is framed in a weak institutional setting where functions, roles, and responsibilities have been established in a fragmented manner and resources and capacity are limited. Coverage is limited and internal audit activities are primarily focused on financial compliance with no evidence of a strict adherence to defined standards (PEFA PI-26). There is no guidance on procurement audit in an internal audit manual with robust risk management methodology or other instructions to support a comprehensive procurement review at the national level. GIG conducts internal audits that cover procurement and contract management, but they are generally limited to MoF activities. The PFM Strategy for Timor-Leste for 2023–2027 addresses these challenges and includes remedial actions such as the passage of a new internal control law, professionalization of the internal control function, development of a manual with a risk assessment methodology and code of ethics and rollout of an internal audit certification training program.

External audit

318. CdC was established in 2019 under the organic law of the Chamber of Accounts (Law 9/2011 or LOCC).¹⁰⁵ As such, CdC has the powers to scrutinize the execution of the State Budget and the annual financial statements, in coordination with the National Parliament. CdC oversees the financial activities of the state using four modalities of financial oversight: audit of the General State Account/*Conta Geral do Estado* (CGE), prior control (*fiscalização prévia/VISTO*), concurrent control (*fiscalização concomitante*), and successive control (*fiscalização sucessiva*). While including performance elements in the external audits, CdC has not yet extended its activities to ‘performance audits’ (PEFA PI-8). As a drawback, PEFA (PI-30) points out that while by law, CdC operates independently from the executive, the appointment and removal of the Head of CdC by the President – and not by the Parliament – raises an issue of political independence.

319. The review of CdC audits revealed that they have a strong public procurement component and risk is a factor in the decision to audit the public procurement activities. One of the elements considered when determining the level of risk is the contract amount; for instance, the procurement prior review by

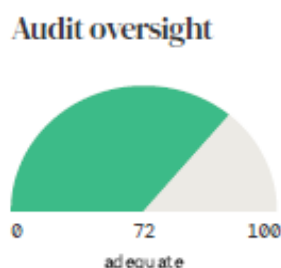
¹⁰⁴ PEFA 2018, 4.2 Effectiveness of internal control framework

¹⁰⁵ Law of National Parliament No.9 of 2011 Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court (*Orgânica da Câmara de Contas do Tribunal Superior Administrativo, Fiscal e de Contas*) LOCC.

CdC is triggered by a monetary threshold of US\$5 million. However, this is deemed a high threshold for Timor-Leste conditions, if not compensated by other forms of risk mitigation, particularly when it is related to direct contracting.

320. Overall, the “audit oversight” score of 72 under the OBS¹⁰⁶ is considered adequate and shows progress from 2019 when the score was 67.

Figure 19: OBS - Audit oversight score



Source: OBS 2021.

<https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste>

Note: Weak - 40; limited - 41–60; adequate - 61–100.

Legislative oversight

321. **The Parliament** has oversight over the country finances and the government has a legal obligation to present to the National Parliament quarterly reports on the budget execution (including revenue and expenditure) as well as an obligation to present audited financial statements after the closing of the fiscal year with the Report and Opinion on the State General Account (*Relatório e Parecer sobre a Conta Geral do Estado*, RPCGE).

322. The National Parliament can ask CdC to conduct an audit of a specific entity indicating the grounds for the request¹⁰⁷ and the regular audit reports¹⁰⁸ (including procurement audits) are submitted to the Parliament for information. The RPCGE which is submitted annually to the Parliament for review and approval contains information on prior review status and some statistics for the contracts under the Infrastructure Fund and, in previous reports, captured some procurement-related recommendations.

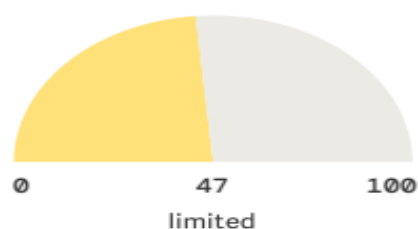
323. PEFA identifies some weaknesses related to the legislative oversight (for example, the regularity of hearings of the audit findings and transparency of the legislative scrutiny of the audit reports - PI-31) that also have impact on the procurement oversight. The OBS rates the legislative oversight as ‘limited’ at 47 which shows that progress was made compared to 2019 when the score was 39.

¹⁰⁶ The OBS is a research instrument that uses internationally accepted criteria to assess public access to central government budget information; formal opportunities for the public to participate in the national budget process; and the role of budget oversight institutions.

¹⁰⁷ A.12 Law 9/2011 LOCC.

¹⁰⁸ Includes: concurrent control/review (*fiscalização concomitante*); successive control/ review: (*fiscalização sucessiva*).

Figure 20: OBS - Legislative oversight score



Source: Open Budget Survey 2021 <https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste>.

Note: Weak - 40; limited - 41–60; adequate - 61–100.

Mechanisms for following-up on audit findings

324. Internal audits follow-up. According to PEFA when an internal audit exercise is performed in support of a public institution outside the MoF, the Office of Internal Audit shares the audit report and follow-up matrix with its counterparts but does not conduct a follow-up mission. The responsibility to follow-up on the implementation of joint internal audits recommendations is transferred to the internal control body within the audited institution.¹⁰⁹ The MoF conducts very few internal audits outside the MoF, and there is no central record of how the recommendations are implemented.

325. External audits follow-up. The auditees are instructed by CdC to provide a written report on the actions taken to address the audit findings and recommendations, with evidence and supporting documents. The reporting is typically within 6 months after the audit is completed. CdC may conduct follow-up audits/*auditorias de seguimiento*, to ascertain how the recommendations have been implemented under operational audits that normally include procurement in their scope (for example, the 2017 follow-up audit of the Infrastructure Fund). Overall, there is no evidence of the degree of implementation of the audit recommendation under the non-CGE audit. Hence, the mechanisms in place are not deemed sufficiently robust.

Substantive or material gap/s

326. Internal control/procurement audits. Internal control/audit is relatively weak and does not guarantee the effective control of public expenditures including for procurement and does not ensure consistent reporting to the management on compliance and effectiveness of the procurement operations.

327. External oversight. Gaps identified are related to the fact that CdC is not fully independent, the performance audits are still in its early stages, and the prior review threshold for direct contracting seems high for Timor-Leste conditions—if not compensated by other forms of risk mitigation. The procurement content of the CdC annual report to the Parliament does not consistently raise systemic procurement issues.

328. Follow-up mechanisms. While follow-up requirements and systems are in place, they do not support consistent follow-up on the auditor's recommendations and are therefore not entirely effective. Failure to take stock and consistently follow up on the audit findings in procurement is a missed opportunity to further improve the system. Taking advantage of the information available at this stage,

¹⁰⁹ PEFA 26.4 - Response to internal audits

identifying the most frequently found vulnerabilities (procurement related and those impacting on procurement) could inform the managers and policy makers to constantly improve the system and the efficient use of public funds. This is all the more needed in the absence of a procurement monitoring system. A red flag was raised as this action cannot be immediately mitigated through actions in the public procurement system and requires broader action at the PFM level.

Sub-indicator 12(b) Coordination of controls and audits of public procurement

Assessment Criteria:

- (a) *There are written procedures that state requirements for internal controls, ideally in an internal control manual.*
- (b) *There are written standards and procedures (e.g., a manual) for conducting procurement audits (both on compliance and performance) to facilitate co-ordinated and mutually reinforcing auditing.*
- (c) *There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with.*
- (d) *Clear and reliable reporting lines to relevant oversight bodies exist.*

Summary of findings

329. Main strengths. The government recognizes the benefits of coordination for mutual reinforcing auditing between the internal and external audits. Thus, the audit regulations support cooperation among audit institutions to foster effective and mutually reinforcing auditing and define the scope of the exchange of information among them.

330. Availability of audit written procedures/manuals:

- (a) **Internal control/audit procedures** are dispersed in various sources of guidance for conducting internal audits. There are SOPs and work instructions, prepared by the MoF and internal audit guidelines prepared by the internal audit office that detail roles and responsibilities for a range of PFM processes. The GRP FreeBalance system and the Treasury Manual provide instructions to implement the internal control procedures relating to the budget cycle.¹¹⁰ The government needs, however, to develop an internal control manual with code of ethics and risk methodology as part of its PFM Strategy.
- (b) **External audit.** There are no manuals or national standards for audit including for procurement audit. CdC is a member of the International Organization of Supreme Audit Institutions (INTOSAI) since 2011 and applies the ISSAI¹¹¹ standards in most of its auditing, with the exception of the 'RPCGE'.¹¹² However, there are no manuals/guidelines to support auditors in complying with national or ISSAI standards.

331. The government recognizes the benefits of coordination between the internal and external audit and LOCC has provisions in support of such cooperation.¹¹³ However, enforcement is weak and there are no written standards and/or manuals to guide this process. For example, LOCC has provisions in support of such cooperation requesting internal audit to report to CdC on the annual audit programs, the outcomes of the reviews requested by the CdC and financial offenses. CdC reports for the first-time

¹¹⁰ PEFA PI-25.

¹¹¹ The International Standards of Supreme Audit Institutions, ISSAIs, are issued by the International Organization of Supreme Audit Institutions, INTOSAI. See www.issai.org

¹¹² PEFA PI-30.

¹¹³ A.10 Law 9/2011 LOCC refers to Cooperation of CdC with internal auditing bodies

organizing meetings in 2021 with other oversight agencies (CAC, IGE, sectoral inspection) to discuss the action plan and other topics of mutual interest; it also reports on capacity-building actions it delivered for the benefit of general inspectorates and internal audit units of ministries and other public institutions. Such activities are captured in Table 16 including their level of accomplishment.

Table 16: Accomplishment of mutually reinforcing activities by oversight agencies

Specific objective	Action	Accomplished %
Senzitation and dissemination of CdC role	Meetings with other control institutions, namely CAC, IGE and GAI to share experience and information	30
Capacity building	Organizing seminars for the internal control bodies (general inspections and internal audit units) of ministries and public institutions.	100

Source: 2022 CdC Annual report, VIII.1. Logical framework – performance verification for the Chamber of Accounts; *Quadro lógico – verificação do desempenho da câmara de contas* p.27.

332. Audit frequency. The audit frequency follows a risk-based approach but is constrained by the number of auditors available to conduct annual audits in a timely manner. Internal audit does not have the capacity to conduct annual audits. For the external audit, the periodicity depends on the type of audit. State General Account/CGE Audit is carried out annually. The other types of audits are carried out on a need basis and based on risk according to the CdC audit plan laid out in the annual Action Plan published on the CdC website. While audits may not exclusively cover procurement or be called ‘procurement audits’ most of the audit reports over the last 3 years (that is, 70 percent of the ‘concurrent’ and ‘successive’ audits) had included procurement in their scope. It was noted that most audits are published 3–5 years after the year of the audit, which decreases their impact. However, the trend is positive with audits recording shorter completion times.

333. Clear and reliable reporting lines to relevant oversight bodies. There are clear requirements for supervisors, auditors and board of supervisors of commercial companies to report cases of corruption and not doing so is construed as a criminal offense.¹¹⁴ There are also requirements as per LOCC, for internal and external auditors to report to the General Prosecutor Office (*Procuradoria Geral da República*, PGR) cases that entail financial accountability and for the Parliament to report all cases of corruption, financial accountability issues and, other irregularities to the competent authorities.

Substantive or material gap/s

334. Audit manuals and written standards. There are no manuals (or written procedures) to guide procurement audit (compliance or performance, internal or external). While coordination is supported by the legal framework, there are no written standards to facilitate coordinated and mutually reinforcing auditing.

335. Audit frequency. Internal audit does not have the capacity to conduct annual audits based on risk in the agencies under its jurisdiction.

12(c) Enforcement and follow-up on findings and recommendations

Assessment Criteria:

¹¹⁴ A.21 Anti-corruption law 7/2020.

- (a) Recommendations are responded to and implemented within the time frames established in the law.
- (b) There are systems in place to follow-up on the implementation/enforcement of the audit recommendations.

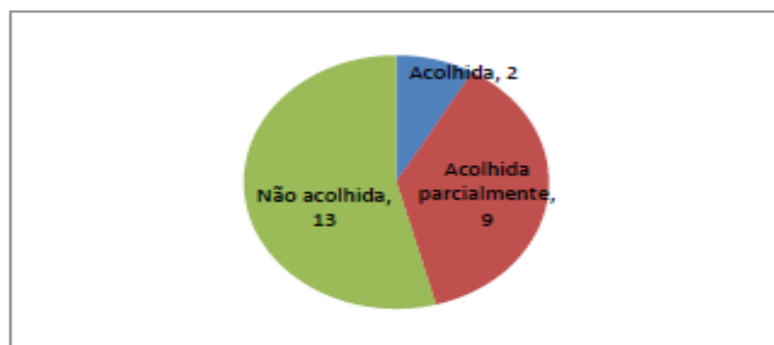
Summary of findings

336. Main strengths. The requirements for reporting on the status of CdC recommendations are generally complied with for the CGE audit and this is captured in the RPCGE that is submitted to the Parliament annually and published on the court's website.¹¹⁵ It identifies the recommendation, MoF response and the level of implementation of each recommendation. Recommendations related to sanctions and potential cases of fraud and corruption are reported and followed up by PGR which can decide to register complaints to the court based on audit findings or from any request received from a government agency with oversight and control responsibilities. The follow-up by PGR is captured in its annual report to the Parliament.

337. Implementation and response to the external audit recommendations. While the external audit activities follow a formal process, the actual follow-up by auditees on recommendations is weak, the rate of implementation is low, and the recommendations are not prioritized or agreed with the audited entity with a timeline for action (PEFA PI-26). Follow-up actions and results for the CGE audit are reported in the CdC's annual RPCGE, published on the court's website. They show a low level of completion: Figure 21 illustrates the completion rate in the enforcement of external audit recommendations under the RPCGE 2021: 54 percent not accomplished, 38 percent, partially accomplished and 8 percent accomplished.

Figure 21: Fulfillment of audit recommendations (number of cases)

Gráfico 1 – SITUAÇÃO DAS RECOMENDAÇÕES DO RPCGE 2019



Source: RPCGE 2020/ published 2021.

Note: Acolhida: met; Acolhida parcialmente: partially met; Nao acolhida: not met.

338. For the non-CGE¹¹⁶ audits that have procurement components, there are no statistics on the level of response and implementation of the audit recommendations.

339. Implementation and response to the internal audit recommendations. PEFA confirms that the management provides a formal response to audit recommendations for most of entities audited, but there is little evidence of any follow-up by the audited institutions and there are no consolidated records of implementation of recommendations by the internal audit office. PEFA (PI-26.4) concludes that the

¹¹⁵ <https://www.tribunais.tl>

¹¹⁶ Concomitante audits /fiscalização concomitante and successive audits/ fiscalização sucessiva

monitoring system to collect information on the response to the MoF internal audit recommendations and findings is not effective.

Substantive or material gap/s

340. Follow-up by audited agencies on auditor recommendations. There are no consolidated records of implementation of recommendations by the internal audit office. For external audit, while reporting on the CGE audit is rigorous, the rate of implementation by the executive is low, raising concern about the effectiveness of the audit process. Follow-up on the regular external audit recommendations that typically have a strong procurement component, seems rather weak and there are no published statistics on the level of compliance.

Sub-indicator 12(d) Qualification and training to conduct procurement audit

Assessment Criteria:

- (a) *There is an established program to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits.*
- (b) *The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.*
- (c) *Auditors are selected in a fair and transparent way and are fully independent.*

Summary of findings

341. Main strengths. Candidates for the auditor functions are generally recruited competitively from inside and outside the government based on an open selection. After recruitment and after completing training, there are requirements for both internal and external auditors to be certified. To complement the internal capacity, when required, consultants may be hired to support specialized activities.

342. Auditors' selection and training/capacity building in procurement. Besides the initial certification training, other training events are ad-hoc and supply driven. The main supplier of training programs for auditors is the 'Partnership for the improvement of service delivery through the strengthening of management and supervision in Public Finances in Timor-Leste' / *Parceria para a melhoria da prestação de serviços através do reforço da gestão e supervisão das Finanças Públicas em Timor-Leste*, further called PFMO. The program includes topics related to public institutions, financial responsibility, government accounting, legal and informatics. While it is relevant, the program does not include procurement audit in its design.

343. Internal auditors are subject to certification by an international institute (Indonesia Institute for Internal Auditors [IIA]). However, there is no coherent/strategic approach to developing the career of the internal auditors. The cadre of professional comptrollers and auditors is yet to be established. The turnover of qualified auditors is quite high; the majority of the certified auditors have left the MoF for other opportunities. Currently, out of the eight internal auditors in MoF, only two were certified at the time of this assessment. There is a high reliance on fixed-term consultants, out of the eight internal auditors, five (60 percent) are fixed-term consultants and three civil servants.

344. External auditors undergo further training and certification after recruitment. According to the CdC latest Annual reports¹¹⁷ its training activities have been decided based on invitations from other SAls

¹¹⁷ https://www.tribunais.tl/wp-content/uploads/2021/05/RA_CdC_2020.pdf p. 21

or under cooperation arrangements. They may include invitations from the Organization of SAIs, individual SAIs or CPLP. No training activities were reported as accomplished in the Annual reports 2019–2020 but they have resumed in 2021. PFMO program has offered regular training to CdC auditors. However, as confirmed in the PFMO mid-term report, the PFMO¹¹⁸ project has not managed to anchor the development of additional technical financial audit and procurement expertise in CdC. Currently CdC works on a needs assessment with the PFMO to establish individual capacity-building programs for its staff.

345. Cross learning among oversight institutions. CdC is organizing seminars for internal control bodies (general inspections and internal audit offices) of ministries and other public institutions, to discuss issues of mutual interest and foster cross-fertilization with a view to improving the State's financial administration control system. The Annual report 2021 identifies this action as accomplished.

346. Auditors' expertise in procurement. Both the MoF and CdC endeavor to assign audits with procurement components to staff that have knowledge/experience of the subject matter. Reportedly some auditors have work experience in procurement. When required consultants can be hired in specialized areas, including procurement.

347. Auditors' selection and independence:

- **Internal auditors.** Candidates for the auditor functions are selected based on principles defined in the Law on the Statute of Civil Servants.¹¹⁹ Selection must be fair, competitive, and based on qualifications, experience, and professional competence of candidates on a non-discriminatory basis. The regulations address conflict-of-interest and integrity requirements related to civil servants in general and the process is described in detail in the relevant regulations¹²⁰ on the recruitment, selection, and promotion of civil servants.
- **External auditors** have a special regime that is governed by the statute and career under the special regime of the Auditors of the Chamber of Accounts of the High, Administrative, Tax and Accounting Court.¹²¹ The selection is based on requirements of fairness and transparency, with relevant selection criteria and is described in detail under this law. After recruitment the candidates undergo theoretical and practical training and after passing this stage, they have a probation period of one year. The focus of the training is on public administration, public finance, audit, accounting, professional deontology and Portuguese. It is conducted at the Center of Legal Training (*Centro de Formação Jurídica*) or other recognized institution locally or internationally.

Substantive or material gap/s

¹¹⁸ 2020, EU/Ecorys PFMO Mid Term review report, p.29

¹¹⁹ Law 8/2004 Civil Service Law

¹²⁰ Decree Law No.34 of 2008 on the regime for competition, recruitment, selection and promotion of the public administration personnel

¹²¹ Decree Law No. 20 of 2014 on the special regime of the Auditors of the Chamber of Accounts of the High, Administrative, Tax and Accounting court [*Estatuto da carreira de regime especial dos auditores da Câmara de contas do tribunal superior administrativo, fiscal e de contas*].

348. There are no regular programs for capacity building for auditors (internal and external), including in procurement audit anchored in the Timor-Leste legal framework and practice.

Table 17: Pillar IV Indicator 12: Overview of substantive or material gaps – with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
12(a) Legal framework, organization, and procedures of the control system	The internal control mechanism is not effective due to limited human resources and lack of manuals/instructions on risk management and procurement.	M	Internal audit function needs to be strengthened overall as part of the PFM strategy that comprises the passage of a new Internal control law, professionalization of the internal control function, development of a manual with a risk assessment methodology and code of ethics and rollout of an internal training certification.
	While external audit has a strong procurement component – there are some gaps identified as follows: external oversight is characterized by a lack of independence of the external audit function (PEFA); risk mitigation for direct contracting is not sufficient; performance audits are in the early stages.	M	Strengthen the external audit (including performance audit) and legislative oversight by implementing the PFM strategy. Assess the appropriateness of the prior review threshold by CdC, particularly in relation to direct contracting, and make an informed decision on the optimal approach. Consider strengthening the procurement content of the RPCGE to inform the legislator on the systemic issues identified, recommendations made, and follow-up by the respective government agencies.
12 (b) Written standards for conducting procurement audits to facilitate coordinated annual audits.	Overall, there are no manuals to guide procurement audit (compliance or performance, internal or external) and no written standards to facilitate coordinated and mutually reinforcing auditing.	M	Prepare manuals to include guidance on procurement audit including in the area of public procurement. Create a framework for consistent exchanges of information as required under the LOCC.
12 (c) Recommendations are responded within legal time and there are follow-up systems that are enforced	*There is little evidence of follow-up by the audited institutions and there are no consolidated records of implementation of recommendations to inform both practitioners and policy makers.	H	Strengthen and monitor the follow-up mechanism and develop records for the implementation of audit recommendations and apply sanctions for noncompliance.

SI	Substantive or material gap Red flag *	Risk	Recommendation
			A dashboard can be created to visualize the reporting for each agency to take appropriate actions and have a global view of the level of enforcement at the country level.
12(d) Training internal and external auditors and procurement knowledge.	There is no procurement training for internal and external auditors tailored to the national public procurement systems nor for carrying out performance audits.	M	Include a training module for procurement audit in the internal and external auditors training curriculum and develop an audit manual with a procurement section.

Indicator 13. Procurement appeals mechanisms are effective and efficient

Sub-indicator 13(a) Process for challenges and appeals

Assessment criteria:

- (a) Decisions are rendered on the basis of available evidence submitted by the parties.*
- (b) The first review of the evidence is carried out by the entity specified in the law.*
- (c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions.*
- (d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.*

Summary of findings

349. **Main strengths.** A mechanism for complaints is in place, providing for time frames that do not unduly delay the procurement process.

350. **Decisions on the basis of available evidence on complaints.** PPL 2005 has limited provisions concerning evidence to be submitted by parties in the context of complaints. PPL 2005 requires written decisions of competent entities in response to complaints to set out the grounds taken into account and the relevant provisions of the law. There are no supporting regulations or guidelines to further elaborate upon requirements for rendering decisions. There are no samples of decisions on challenges (complaints) available to the Assessment Team to review the actual practice.

351. **First review of evidence.** PPL 2005 provides that the first review of the evidence is carried out by the competent entity specified in the law and provides that the written decision on the complaint shall set out the grounds which have been taken into account as well as the relevant provisions of the law. It has not been possible to assess whether this is the case in practice.

352. **Appeals body issues final, enforceable decisions, within established time frames:** No information or data are available to assess these criteria.

353. As an observation applicable more generally to indicator 13, the lack of information or data available relating to decisions of the appeals body mean that the appeals system lacks transparency and accountability, and its effectiveness cannot be assessed or measured. This issue has been addressed in the combined recommendations for the review and appeals system at indicator 1(h)(b).

Substantive or material gap/s

354. **Decisions based on evidence.** The legal framework refers to the basis for a decision on complaints but no information is available to assess the basis on which decisions are rendered in practice.

355. **Review of evidence is carried out by entity specified in law.** The legal framework refers to the written decision on complaints, but there is no information available to assess decision making in practice.

356. **Issue of final, enforceable decisions within established time frames.** No information or data are available to assess these criteria.

Sub-indicator 13(b) Independence and capacity of the appeals body

Assessment criteria:

The appeals body:

- (a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions*
- (b) does not charge fees that inhibit access by concerned parties.*
- (c) follows procedures for receipt and resolution of complaints that are clearly defined and publicly available.*
- (d) exercises its legal authority to suspend procurement proceedings and impose remedies.*
- (e) issues decisions within the time frame specified in the law/regulations.*
- (f) issues decisions that are binding on all parties.*
- (g) is adequately resourced and staffed to fulfil its functions.*

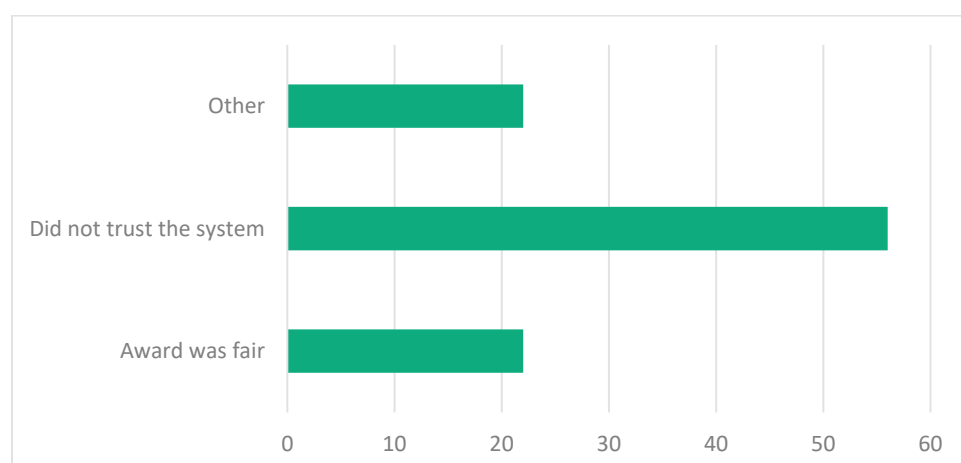
Summary of findings

357. Independence of the appeal bodies. The bodies competent to consider an appeal are not guaranteed sufficient independence of the appeal against decisions made on complaints by the initial review authority. PPL 2005 specifies the entities competent to decide the hierarchical appeal being “leaders of State organs of power, ministers and secretaries of State”. They are competent to decide hierarchical appeals against decisions of: (a) officers expressly appointed and authorized to carry out procurement procedures; (b) heads of autonomous services, public entities and other bodies with administrative and financial autonomy; and (c) other legal entities in which the State has a higher than 50 percent capital participation which, although not of a business nature, mainly pursue public purposes. PPL 2005 stipulates that the Prime Minister is the entity competent to examine and decide hierarchical appeals concerning procurement which are lodged against decisions made by leaders of State organs of power, ministers and secretaries of State.

358. Fees charged by the appeal body. The appeal body does not charge fees that inhibit access by concerned parties. There is no provision in PPL 2005 requiring payment of fees for submission of a hierarchical appeal.

359. Consistency of appeals with defined public procedures. There is no information or data available to substantiate whether the hierarchical appeal body/ies follow clearly defined public procedures, exercise legal authority to suspend procedures, issue decisions within the time frame specified that are binding on all parties or are adequately resourced and staffed. Only 2 from 14 respondents have lodged a complaint. Around 78 percent of respondents did not consider the award fair but decided not to file a complaint and 56 percent identified the system as not trustworthy. There are also concerns about retaliation. To improve the system, one of the recommendations is to have clear SOPs.

Figure 22: Reasons for not challenging the award decision



Source: MAPS private sector survey.

Substantive or material gap/s

360. **Independence of appeals body (see also Sub-indicator 1(h)(b)).** The bodies competent to consider an appeal against a decision on hierarchical review are not guaranteed sufficient independence of the procuring entity (public service). There is the possibility that the competent entities for appeal may have been involved, or have the potential to be involved, in some capacity in the procurement transaction or process leading to contract award decisions which are the subject of complaint. See indicator 1(h)b) for reasons for allocation of red flag.

361. **Procedure for appeal, publication of decisions and resources for appeal.** There is no information or data available to assess these criteria.

Sub-indicator 13(c) Decisions of the appeals body

Assessment criteria:

Procedures governing the decision-making process of the appeals body provide those decisions are:

(a) based on information relevant to the case.

(b) balanced and unbiased in consideration of the relevant information.

(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.

(d) decisions are published on the centralized government online portal within specified timelines and as stipulated in the law.

Substantive or material gap/s

362. **Decisions of appeals body.** There is no information or data available to assess any of the criteria under these decisions of appeal body sub-indicator.

Table 18: Pillar IV Indicator 13: Overview of substantive or material gaps with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation – applying to all gaps identified
13(a)(a) Decisions based on evidence submitted by parties	No information available to assess evidential basis of decision making in practice	H	See recommendations at Sub-indicator 1(h)(b) under the heading ‘Critical study of current system of hierarchical review plus short term/interim measures’.
13(a)(b) Review of evidence carried out by specified entity	No information available to assess decision making in practice	H	
13(a)(c) Final, enforceable decisions are issued.	No information or data available to assess this criterion	H	
13(b)(a) Appeals body not involved in any capacity in procurement transactions	*Possibility that bodies conducting hierarchical review may have involvement in some capacity in procurement transaction	H	
13(b) (b) to (g) Procedure for appeal, publication of decisions and resources for appeal	No information or data available to assess these criteria	H	
13(c) (all criteria) Decisions of appeals body	No information or data available to assess any of the criteria in this sub-indicator	H	

Indicator 14. The country has ethics and anti-corruption measures in place

Sub-indicator 14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

<p>Assessment Criteria: <i>The legal/regulatory framework provides for the following:</i></p> <ul style="list-style-type: none"> <i>(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.</i> <i>(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</i> <i>(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.</i>
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Summary of findings

363. Main strengths. The government commitment to strengthen governance and clamp down on corruption is part of SGP 2011–2030 and was reinforced by its ratifying the UNCAC agreement in 2008 and setting in place a comprehensive framework to prevent, detect and penalize corruption. These efforts

have been recognized by Transparency International so Timor-Leste advanced 4 points on the Corruption Perception Index scale to 42 in 2022 from 38 in 2019 and by 12 points since 2013.¹²² Timor-Leste has strengthened the legal and institutional framework consistent with UNCAC principles by establishing CAC and adopting the anti-corruption law. The anti-corruption law recognizes procurement as an area of high risk that requires special attention and makes specific recommendations on publicity, transparency, efficiency and fairness, prevention of corruption, beneficial ownership, conflict of interest, and asset declaration, among others.¹²³

364. The legal framework contains definitions of fraud, corruption and other prohibited practices in procurement that are generally consistent with obligations deriving from legally binding international anti-corruption agreements (for example, UNCAC to which Timor-Leste adhered in 2009). Definitions are found in the criminal code and in the law that creates CAC. A comprehensive treatment of this subject (including for procurement) is found in the anti-corruption law that defines various types of crimes characteristic for both the private and the public sector and identifies procurement as an area vulnerable to corruption that requires specialized actions to prevent and combat corruption. PPL 2022 also has a section that focuses on fraud and corruption and other prohibited practices (for example, fraudulent and corrupt collusive behavior, coercive practices, and obstruction of justice). It also identifies the principle of conduct by which public servants involved in procurement should abide.

365. The legal and regulatory framework contains definitions of the individual responsibilities, accountabilities and penalties for government employees and private firms, or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice to other provisions in the criminal law. Each prohibited behavior identified under the anti-corruption law (for example, crimes committed while exercising public roles, passive and active corruption of public officials, embezzlement of funds and public property, abuse of power, obstruction of justice, influence peddling, profiting from public contracts and conflict of interest) triggers specific sanctions (for example, years of imprisonment, fines, and other remedies). A person convicted of a crime identified in the anti-corruption law that is punishable by imprisonment for more than five years, is prohibited from being in public offices for a period of 5 to 10 years. It further provides for specific requirements such as beneficial ownership and asset declaration by civil servants including in the area of procurement and employment restrictions after leaving government (a cooling-off period). It requires that the code of ethics be developed in areas vulnerable to corruption like procurement. Finally, DL 12/2005¹²⁴ which governs the debarment in public procurement, defines the conduct which constitutes a relevant administrative offence, lists the measure which may be applied and by whom, and sets out the procedure for appeal against measures applied. PPL 2022 establishes the principle of responsibility and identifies remedies related to barring bidders' participation in bidding initiated and applied by the procuring entity but does not exclude other sanctions under the administrative civil and criminal regime under the law. It also states that procuring agencies' staff are subject to the provisions of the code of conduct for civil service.

366. The legal and regulatory framework includes provisions regarding conflict of interest and a cooling-off period for former public officials. Conflict of interest is addressed in multiple legal acts as

¹²² Transparency International <https://www.transparency.org/en/countries/timor-leste>.

¹²³ Anti-corruption law 7/2020: A.7: publicity and transparency in procurement, A.8 Fair and efficient procurement, A.20 preventing corruption in private sector, A.21 disclosing beneficial ownership A.29 Persons subject to asset declaration, A.72 penalties, A.84 Unequal treatment of the participants in procurement, A.87 Conflict of interest, A.97 obstruction of candidates to procurement

¹²⁴ Decree Law 12 of 2005 Administrative offences under the legal regime of procurement and the legal regime of public contracts.

outlined below. The statute of the civil service ¹²⁵ addresses situations of conflict of interest relevant to public procurement personnel. PPL 2005, beside referring to the statute of the civil service, outlines the nature of personal relationships that may trigger conflicts of interest and remedies. More recently, conflict of interest is addressed in the 2019 Code of Conduct for the government members (that is, the VIII Constitutional Government) which includes rules to prevent conflict of interest and consequences of noncompliance. Thus, public officials cannot intervene in judging cases where they have a personal interest that can interfere with an impartial decision. Any situation of conflict of interest should be notified to the appropriate higher hierarchical level. Finally, the anti-corruption law has extensive provisions on conflict of interest (including resulting from beneficial ownership) and provides for a cooling-off period for public officials who are hired in the private sector. PPL 2022 includes in its principles of conduct, the requirement for civil servants to avoid, in the performance of their duties, all situations of potential conflict of personal interests; it further underscores, under the ineligibility criteria, that bidders who are in conflict-of-interest situations which cannot be effectively corrected, cannot participate in public tendering.

Sub-indicator 14(b) Provisions on prohibited practices in procurement documents

Assessment Criteria:

- (a) *The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.*
- (b) *Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.*

Summary of findings

367. **Main strength.** Fraud and corruption clauses are incorporated in the sample bidding documents published on the portal.

368. **Prohibited practices in the bidding document.** While the bidding documents published on the online portal that are modeled after the IFIs SPDs contain fraud and corruption provisions, it is noted that the legal framework does not mandate the use of these documents or specify that the inclusion of such clauses is a mandatory requirement.

Substantive or material gap/s

369. The legal and regulatory framework does not mandate the inclusion of the fraud and corruption clauses in the bidding documents. Hence, there is no guarantee that they are consistently incorporated and there is no guidance as to how this is accomplished.

¹²⁵ A.42 Law 8/2004 Civil Service Law.

Sub-indicator 14(c) Effective sanctions and enforcement systems

Assessment Criteria:

- (a) *Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.*
- (b) *There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.*
- (c) *There is a system for suspension/debarment that ensures due process and is consistently applied.*
- (d) *There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties.*

Summary of findings

370. Main strengths. The Timor-Leste legal regulatory framework (for example, civil service, anticorruption, procurement legal framework), emphasizes preventing and mitigating corruption risks particularly in areas of high vulnerability like procurement. To this end, civil servants and all citizens are required to report potential cases of fraud and corruption. To facilitate this process, CAC has established a website to allow citizens to complain and divulge such cases. More specifically, in the area of procurement, there are provisions in the legal framework¹²⁶ for bidders found guilty of violating the legal requirements, including for cases of fraud and corruption, to be barred from participating in procurement temporarily or permanently.

371. Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities. For the public servants, the requirement to report irregularities, including potential conflict-of-interest situations, is part of the statute of the civil service,¹²⁷ 2019 Code of Conduct of government members, PPL 2005, and the anti-corruption law. The anti-corruption law addresses the topic of anonymous complaints in addition to the other forms stated in the Criminal Code. It underscores that the conduct of any person who has reported to the competent authorities, in good faith and on the basis of reasonable suspicion, any facts relating to crimes identified under the law is deemed lawful. CAC has on its website information on how complaints can be reported <http://cac.tl/report-corruption-2/how-to-report/>. In the CAC Annual 2020 Report, the following complaints have been recorded and categorized by their nature and source.

Table 19: Source of public complaints

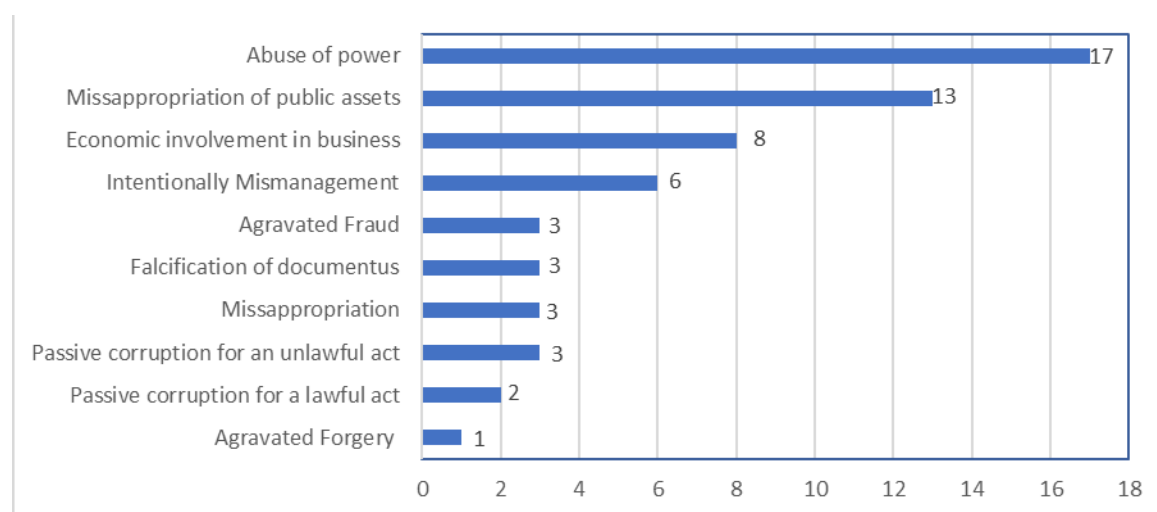
1	Public service servant	20
2	Company/Businessmen	20
3	Student	20
4	Community	10
5	By telephone	5
	Total	75

Source: CAC 2020 Annual report.

¹²⁶ Decree Law No. 12 of 2005 Administrative offences under the legal regime of public procurement and the legal regime of public contracts

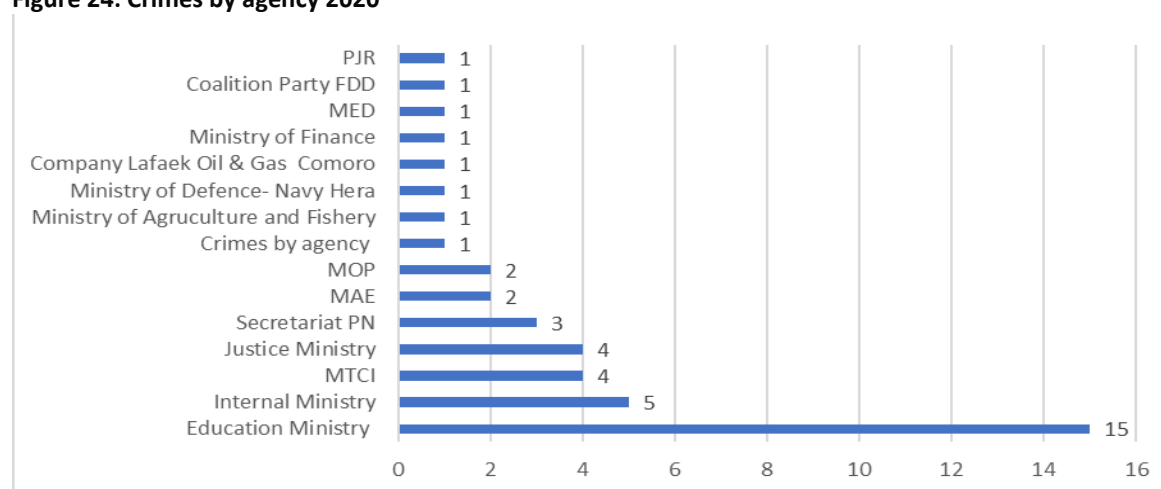
¹²⁷ Law 8/2004 Civil Service Law.

Figure 23: Type of crimes



Source: CAC 2020 Annual report.

Figure 24: Crimes by agency 2020



Source: CAC 2020 Annual report.

372. **There is a system in place and there is evidence of reports on potential cases of corruption** (from audit, civil servants, and citizens) that are being followed. Consistent with the Procedural Penal Code all the complaints received are to be reported immediately to PGR for its validation to make a determination on the case. PGR is “the owner” of the criminal proceeding. Thus, the criminal investigations are carried out by PGR or by an entity that is delegated by from PGR. Some of the cases are delegated to CAC and national/criminal police. While there are no specific statistics regarding procurement complaints CAC estimates that 75–80 percent of the complaints they receive are related to procurement. Therefore, it is important to identify procurement cases separately, including their content (for example, conflict of interest, collusion, coercive practices, and bribes), to appropriately inform the efforts to prevent and mitigate corruption in this area. The anti-corruption strategy that CAC will develop should address in more detail the reporting on corruption cases in procurement and how they should be monitored and published.

373. **Debarment**¹²⁸ is addressed under the legal regime of public procurement and the legal regime of public contracts (see 1(d) (c)). There is no implementation guide and there is no evidence on how the system is implemented and enforced. There is no list of debarred bidders in the procurement portal although there is a page dedicated to this purpose. Debarment is one of the tools used to safeguard the integrity in public procurement and needs to be urgently enforced and supported by appropriate regulations that guarantee fairness and due process. PPL 2022 refers to the sanction of barring bidders from participating in future procurement consistent with the gravity of the offense for a certain time frame.

374. **Enforcement through application of stated penalties.** Statistics on sanctions for procurement officials and bidders' debarment are not available in spite of public procurement accounting for a significant share of the cases received by CAC.¹²⁹ The information on procurement provided in the PGR report is mostly qualitative. For instance, the PGR 2020 report states that all the line ministries supervised, lack good supervision of contracts by the supervisory bodies, thus jeopardizing the interest of the State. It is also stated that several crimes occurred related to public contracts such as illicit enrichment and influence peddling.

Substantive or material gap/s

375. **Sanctions and enforcement system.** There is evidence that the system on following up on cases of fraud and corruption is generally applied but there is no specific information on procurement (including sanctions for procurement officials) in spite of this being identified as a priority by the anti-corruption law in the fight against corruption. Regarding sanctions for bidders, there are legal provisions for suspension/debarment, however, there is no information on cases of debarred bidders. There is no implementation guide for its application to inform the parties involved in the process.

Sub-indicator 14(d) Anti-corruption framework and integrity training

Assessment Criteria:

- (a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out.
- (b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.
- (c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.
- (d) Special measures are in place for the detection and prevention of corruption associated with procurement.
- (e) Special integrity training programs are offered, and the procurement workforce regularly participates in this training.

Summary of findings

376. **Main strengths.** The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption. The key institutional players are PGR and CAC which have authoritative positions in the government. CAC engages various stakeholders (CSOs, private sector, CFP, other integrity bodies and international partners) in implementing the anti-corruption agenda. CAC is now focused on

¹²⁸ There are three forms of debarment a) exclusion of the tenderer from the procedures; b) declaration of temporary ineligibility drawn up for a period of up to 1 year; c) declaration of permanent ineligibility (Decree law 12/2005, A5).

¹²⁹ CAC estimated them at 75–80 percent of the case load.

the implementation of the anti-corruption law passed relatively recently, in 2020. One of its notable achievements is the implementation of the asset declaration that is now being rolled out. Finally, CAC is working on developing an anti-corruption strategy to foster a coherent and coordinated approach to fighting corruption in Timor-Leste.

377. Anti-corruption framework. The framework is generally comprehensive and includes a relatively recent anti-corruption law (2020, effective in 2021) and some of the mechanisms for its implementation are still to be completed. Key actors include PGR, CAC and CFP. While PGR has the investigative function and reports annually to the Parliament on the performance of its responsibilities, CAC is the key agency implementing the anti-corruption law and is responsible for coordinating the anti-corruption program in Timor-Leste. CAC has an investigative function (at the request of PGR) but it has also a corruption preventive function that is a key dimension of its activity. To identify the areas of highest vulnerability to corruption in Timor-Leste and guide the preparation of an anti-corruption strategy, a baseline survey was prepared in 2019. CFP works in partnership with both PGR and CAC and oversees the effective implementation of the code of conduct.

378. Stakeholders' engagement. CAC is reaching out to stakeholders (CSOs, private sector, and government agencies) that support the advancement of the anticorruption agenda. To this end, CAC signed a memorandum of understanding (MOU) with the Judicial System Monitoring Program (JSMP) in the area of court monitoring, collaborates with the Chamber of Commerce for the dissemination of the anti-corruption law in the private sector and engages some of the large telecom companies to disseminate anti-corruption information. CAC has also signed an MOU with the National Police to work together in the area of investigation. Finally, CAC has signed a quadrilateral agreement with the CFP, Ombudsman and the State General Inspectorate. Internationally CAC has partnered with the United Nations Development Programme (UNDP), Millennium Challenge Corporation (MCC), United States Agency for International Development (USAID), to work on integrity programs in Timor-Leste and carry out various diagnostics, including perception surveys.

379. Mechanism for systematically identifying and mitigating corruption risks. CAC has used surveys as a tool to identify integrity risks and has conducted four integrity perception surveys over the last 10 years and, while not specific to procurement they include procurement findings. The last one in 2020 has identified vulnerabilities among key public institutions mostly ministries. Procurement came up as an area of high risk that requires prompt attention from the government. Integrity risks are also assessed in the CAC Strategic Plan 2021–2025.

380. Statistics on corruption proceedings and convictions. There are statistics available on legal proceedings published by PGR and CAC. CAC published in its annual report complaints received and categorized by type of crime and sector/agency and provides information on the status (see Sub-indicator 14(c)). PGR publishes in its annual report to the Parliament information on the case load, and the status of legal proceedings. Information is, however, limited and cases in the area of procurement are not identified separately to inform the procurement policy decisions.

381. Special measures for the detection and prevention of corruption associated with procurement include the following:

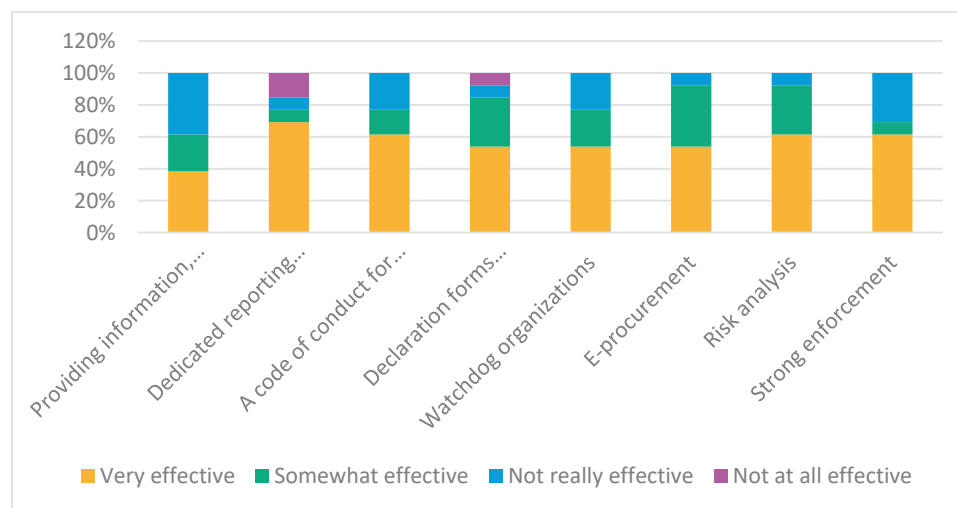
- **For bidders.** The bidding documents posted on the procurement portal include clauses of fraud and corruption and the bid submission form includes a declaration that bidders are not in a situation of conflict of interest, are not sanctioned and must disclose any

commissions they have paid in the procurement process (though such clauses are not mandated [see Sub-indicator 14(b)]). Bidders' debarment is an important mechanism as well [still to be enforced (see Sub-indicator 14(c))].

- **For public officials.** Preventing measures to avoid conflict of interest are asset declaration, beneficial ownership declaration and enforcing a cooling-off period for civil servants and conflict-of-interest self-declaration. Asset declaration (with information on beneficial ownership) is being rolled out and the cooling-off requirement is yet to be implemented. The self-declaration of conflict of interest (a requirement under the anti-corruption law) is still to be enforced for public servants.

382. The public awareness, training activities. Such activities are listed in the anti-corruption law and while CAC has started delivering some awareness programs in schools, with the private sector (Chamber of Commerce) it has not significantly advanced on this agenda because of resource constraints. Currently, the 2022 Budget Book 2 identifies among the CAC activities to be pursued in 2022 public sensitization and capacity building in the area of integrity. Figure 25 identified the private sector perception on the effectiveness of various anti-corruption measures. The most effective avenues are considered: enforcement based on risk, reporting channels and code of conduct followed by e-procurement, oversight and declaration forms signed by suppliers.

Figure 25: Perception of effectiveness of the anti-corruption measures



Source: MAPS private sector survey.

Substantive or material gap/s

383. Special measures for the detection and prevention of corruption associated with procurement including regular integrity training for the procurement workforce are still to be developed. While there are legal provisions for prevention and detecting fraud and corruption in procurement: (for example, debarment sanctions, fraud and corruption clauses in procurement documents, asset declaration including for procurement agents, cooling-off period, conflict of interest), except for the asset declaration, the mechanisms for their implementation are still to be developed and enforced. Lack of enforcement of debarment measures is a high risk from the integrity perspective as companies may continue to bid and perpetuate bad practices. Bidding documents provisions on fraud and corruption are not mandatory which may not guarantee their consistent application.

384. **Integrity training in procurement** is not yet available. There are no integrity training programs organized and offered regularly by procuring entities, the MoF/or CAC to the procurement staff.

385. **Statistics on corruption.** Statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually by both PGR and CAC, but the information is limited and does not identify the procurement cases to enable more targeted mitigation measures in this area.

Sub-indicator 14(e) Stakeholder support to strengthen integrity in procurement

Assessment Criteria:

- (a) There are strong and credible civil society organizations that exercise social audit and control.
- (b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are promoted by the government.
- (c) There is evidence that civil society contributes to shape and improve integrity of public procurement.
- (d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, for example, through internal compliance measures.

386. **Main strengths.** Compared to the country population the number of CSOs in Timor-Leste is quite significant and as confirmed by the Timor-Leste Roadmap for Engagement with Civil Society 2016–2020 civil society capacity has grown notably.¹³⁰ A number of CSOs are involved in policy, advocacy, education, and social audit. CSOs also implement projects and activities with and for the government. While the involvement in public procurement is sporadic, some CSOs expressed their interest of acquiring more knowledge and having a deeper engagement in this area.

Summary of findings

387. **CSOs involvement in procurement.** Timor-Leste counts with many CSOs, but there is little involvement in the public procurement agenda. The Forum ONG Timor-Leste (FONGTIL) is the umbrella group for nongovernment organizations (NGOs) in Timor-Leste. In 2018, it had 348 members, of which 80 percent were local NGOs.¹³¹ Many CSOs have been established after independence when funds became available for the country's reconstruction mainly to deliver projects. Some examples of CSOs involved in policy and advocacy are CSOs that conduct social audit (for example, Belun) and PFM monitoring, advocacy, and public education (for example, Lao Hamutuk, Mata Dalan Institute, Core Group Transparency, Luta Hamutuk). There is no evidence that civil society contributes to shape and improve integrity of public procurement. While there are sporadic comments of some NGOs on procurement issues, there are no CSOs actively engaged to improve integrity in public procurement. One example is that the new PPL was not subject to consultation to elicit citizens comments.

388. **Government support for social audit.** A social audit department was created in the Prime Minister office in 2015 to support communities, through CSOs, to monitor and provide constructive feedback on government programs, projects, and services. In this respect, it is noted that the anti-corruption law emphasizes that the state should guarantee that various points of view are reflected in the governance agenda including of those marginalized.

¹³⁰ 2018, European Union. Timor-Leste Roadmap for Engagement with Civil Society 2016–2020 (update 2018). https://eeas.europa.eu/headquarters/headquarters-homepage/50970/timor-leste-roadmapengagement-civil-society-2016-2020-update-2018_pl.

¹³¹ 2019 ADB Civil society brief.

389. **The private sector support for integrity and ethical behavior in public procurement**, is an area to be further strengthened with the CAC support. The private companies have started adopting integrity tools (source MAPS Private sector survey). CAC, however, has not yet received complaints from within the private sector companies on fraud and corruption cases, which points to the need for increasing awareness and sensitization to corruption issues among private companies consistent with the anti-corruption law. The CAC agenda includes working with the private sector and associations to increase awareness including promoting developing code of conducts similar with those in the public sector, to lay out requirements of good conduct consistent with the nature of their activity.

Substantive or material gap/s

390. **There are no CSOs that exercise social audit and control to improve integrity in procurement.** While there are many CSOs involved in policy, advocacy, and education, except for some sporadic interventions, public procurement is not an area that falls within the scope of these CSOs. There are no clear channels for CSOs' engagement and feedback that are promoted by the government in the area of public procurement (for example, when procurement law is revised). Lack of engagement by CSOs in public procurement and lack of avenues to do so, is a missed opportunity because it won't allow non-state actors to exercise oversight and increase transparency and accountability throughout the procurement cycle from tendering to performance of procurement contracts. This gap is allocated a red flag because engaging CSOs in the area of procurement requires political will including for creating a broad framework for regulatory consultation including regulations in the area of public procurement.

391. **There is little evidence of private companies adopting integrity internal controls and codes of conduct.** The private sector awareness about/and support for the anti-corruption agenda is generally low.

Sub-indicator 14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment Criteria:

- (a) *There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.*
- (b) *There are legal provisions to protect whistle-blowers, and these are considered effective.*
- (c) *There is a functioning system that serves to follow-up on disclosures.*

Summary of findings

392. **Main strengths.** CAC has established a platform on its website to guide citizens on how to report prohibited practices and unethical behavior. There are systems in place to follow-up on disclosure on reports related to fraud and corruption and there are legal provisions for whistle-blower protection.

393. **Channels for reporting fraud and corruption.** There is an accessible and secure channel for reporting cases of fraud, corruption or other prohibited practices or unethical behavior that has been created by CAC. Public servants, citizens and commercial companies are required to report cases of fraud and corruption according to the public/civil service regulations including the code of conduct and the anti-corruption law. CAC has established a secure channel for filing complaints and has posted information on its website <http://cac.tl/report-corruption-2/how-to-report/> detailing the modalities of reporting potential cases of fraud and corruption (that is, in person, by cell phone, by letter, email), languages to be

used and the fact that the anonymous reporting is accepted, and confidentiality is safeguarded (see Box 3). Finally, the anti-corruption law requires all public institutions to offer information to the public on its organization and how to report (including anonymously) potential cases of corruption to public agencies which will encourage more citizens to address issues of concern. This is still to be implemented.

Box 3: CAC website guidance on how to report cases of fraud and corruption

How to Report Corruption:

Corruption can be reported by anyone in any of the following ways:

In person (meet any staff of CAC to give your report verbally or in writing)

By cell phone/telephone: 7326599, 7326597, 7991568; (you can also send text messages)

Write a letter (drop a clearly written note at the office of CAC)

Send email/fax through: cacinfodiak@gmail.com

The use of any of the following Tetum, Portuguese, English, and Indonesia are acceptable in making a report to CAC. One can himself/herself or remain anonymous when making a report. However, it would be great if anyone reporting corruption can leave some identity for feedback and interaction purposes. CAC encourages individuals to identify themselves to help in following up certain investigations. All reports and identity of those reporting will be treated with absolute confidentiality.

Source: CAC web site: <http://cac.tl/report-corruption-2/how-to-report/>.

394. Whistle-blower protection. There are legal provisions to protect whistle-blowers under the witness protection law¹³² and the anti-corruption law,¹³³ but the Ministry of Justice is yet to create the institutional arrangements and the regulations for the enforcement of the witness protection law.

395. Responsibilities for disclosing cases of fraud and corruption. There are clear responsibilities on how disclosures of potential cases of corruption regardless of the source are addressed. Such disclosures are to be addressed/or forwarded to the PGR.¹³⁴ PGR prepares an annual report to the Parliament reporting among others, on the follow-up on such cases.

Substantive or material gap/s

396. Legal provisions to protect whistle-blowers and their effectiveness. While there are legal provisions to protect whistle-blowers, the Ministry of Justice is yet to create the institutional arrangements and the regulations for its enforcement.

Area for improvement

397. Channels for reporting cases of fraud, corruption, or other prohibited practices. While CAC has established a portal to this effect, public institutions are yet to offer information to the public on their organization and how to report (including anonymously) potential cases of corruption (as required under the anti-corruption law).

¹³² Law of National Parliament No. 2/2009 on Witness Protection.

¹³³ A.107-108 Anti-corruption law 7/2020.

¹³⁴ A.49(3) and A.213 Procedural Penal Code 2006.

Sub-indicator 14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment Criteria:

- (a) *There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.*
- (b) *The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements.*
- (c) *The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.*
- (d) *Regular training program are offered to ensure sustained awareness and implementation of measures.*
- (e) *Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks throughout the public procurement cycle.*

Summary of findings

398. Main strengths. The country has a code of ethics for civil servants and members of the government that is relevant to those with procurement responsibilities. It is mandatory and defines accountabilities and sanctions for noncompliance. The code of ethics is reinforced with new requirements in the 2020 anti-corruption law, including asset declaration, cooling-off period, disclosure of conflict of interest, and beneficial ownership.

399. A code of conduct for civil servants was developed under the Civil Service Law (Law 8/2004).¹³⁵ The code of ethics for civil servants is applicable to all government agencies and has provisions relevant to procurement such as receiving things of value in exchange of the execution or omission of an official action and the requirement to reveal to the administration any benefit direct and indirect that they can acquire from a lucrative business, activity that is under its official responsibility. The government has also enacted a code of conduct for the current members of government (that is, the VIII Constitutional Government) – (see Sub-indicator 14(a)). It is noted that, the code of conduct for civil servants was approved before the anti-corruption law that brings strengthened integrity requirements. The anti-corruption law also provides that special codes of conduct should be prepared in areas that are vulnerable to corruption consistent with the particular risks entailed.

400. Asset declaration. The anti-corruption law of 2020 subjects decision makers to specific asset/financial disclosure requirements with the objective to (a) identify and prevent conflict of interest; and (b) monitor unusual increases in the assets of persons subject to this requirement. The authority in charge to receive, monitor and verify the disclosures is CAC except for higher level officials (president, government members, MPs) whose declarations are verified by the supreme court. CAC enforces the law and is also in charge of developing the systems that include guides, consultation, and sanctions mechanisms, maintaining statistics, providing a biannual report with number of persons subject to disclosure requirements, number of noncompliant persons and number of persons subject to sanctions (administrative, disciplinary or criminal). The law defines the public agents who need to provide asset declaration, including the managers and staff assigned to the procurement service. It also establishes the periodicity and content of the declaration including for family members. The law further defines accountabilities and sanctions for non-submittal, delays, incomplete declaration, false information, obstructing the verification process and fraudulent and corrupt acts. Sanctions are also identified for the government agents that verify the declaration in case there are unjustified delays or confidential information is leaked. It also defines the standard retention time of five years with a higher time frame for cases subject to criminal investigation, until the criminal case is closed. To achieve this, CAC developed

¹³⁵ Law 8/2004 Civil Service Law.

SOPs, an electronic platform, and an ongoing dissemination campaign. This is the first year of enforcement of the asset declaration and 22,765 public servants and family member have been registered. As of April 30, 2022, 1,027 (0.6 percent) have submitted their declaration. There is no specific information on procurement officials.

401. The code of ethics is mandatory, and the consequences of any failure are administrative or criminal. The civil servant's normative framework¹³⁶ provides that a civil servant shall, in his or her acts, abide by the code of ethics of the civil service and in the exercise of his or her functions, a civil servant shall abide by an honest, integral, and ethical conduct under penalty of criminal and disciplinary liability. One of the functions of the CFP is to promote the respect for the code of ethics provided for in the Statute of the Civil Service; to initiate, conduct and decide on disciplinary proceedings and apply the respective penalties.

402. Integrity training. Integrity training for public servants is embedded in the CAC statute. There are not yet regular training programs in the area of integrity in procurement that are offered to ensure sustained awareness and implementation of measures. One of the CAC functions is indeed, informing and educating the public.¹³⁷ To this end it carries out publicity campaigns with pamphlets and posters that are publicized in public institutions and makes use of internet and publicity spots in TV and radio. CAC plans to work together with the public institutions to ensure that information about measures against corruption is disseminated in the public entities, among citizens, nongovernmental organizations and educational institutions to promote adequate prevention work, as well as the integration of anti-corruption awareness in the curricula of schools and universities. CAC also includes among its responsibilities the training of investigative journalists.

403. Disclosure forms/templates to support declarations. Both beneficial ownership and asset declaration/financial disclosure are under implementation and are supported by declaration templates/forms. There are no forms, however, for conflict-of-interest declarations. Financial disclosure was launched in 2022 by CAC and there are digitized templates to guide the reporting https://drbi.cac.tl/declarante/login_for_confirmation. The asset declaration contains information related to beneficial ownership. Beneficial ownership¹³⁸ is currently implemented by Serve I.P, public entity that registers the commercial companies operating in Timor-Leste under the Commercial company law 10/2017, but it is not clear how/if this information is used.

Substantive or material gap/s

404. The code of conduct or ethics for government officials, with provisions for procurement. There is a code of conduct created in 2004 but it does not reflect the new principles brought about by the 2020 anti-corruption legislation. The anti-corruption law requires that special codes of conduct be prepared in areas that are vulnerable to corruption consistent with their particular risks, but so far there is no specialized code of conduct in public procurement.

405. Integrity training programs. There are no regular integrity training programs to sustain awareness and implementation of the anti-corruption law in procurement (only ad-hoc dissemination/sensitization events are conducted).

¹³⁶ Law 8/2004 Civil Service Law.

¹³⁷ A.25 Anti-corruption law 7/2020.

¹³⁸ A.21 Anti-corruption law 7/2020.

406. **Standardized forms to support integrity declarations.** While beneficial ownership templates have been prepared there are no specific requirements in bidding documents; there are no templates yet for conflict-of-interest declaration by civil servants, although it is a risk as underscored in the surveys and some audit reports.

407. **Asset declaration.** The code defines accountability for decision makers and financial disclosure is addressed under the 2020 anti-corruption law. However, it is in the early stages of implementation as it has just been launched in 2022. Hence, there is a need to continue its full enforcement and identify the procurement officials separately to improve integrity monitoring in the area of public procurement.

Table 20: Pillar IV Indicator 14: Overview of substantive or material gaps - with risk classification and recommendations

SI	Substantive or material gap Red flag *	Risk	Recommendation
14 (b) The legal/regulatory framework mandates that fraud and corruption provisions be included in the procurement and contract documents and gives precise instructions.	The requirement that procurement documents contain provisions of prohibited practices is not addressed at the level of the legal and regulatory framework.	L	Include in the procurement legal framework the requirement that provisions for prohibited practices be incorporated in the procurement and contract documents and give precise instructions to this effect. In practice most procurement documents (modeled after the IFIs) contain such provisions).
14 (c) There is evidence that this system (including sanctions) is systematically enforced, and reports are consistently followed up by law enforcement authorities.	The mechanism for monitoring and reporting on cases of corruption does not identify procurement separately.	M	Given the vulnerability of procurement to corruption and the fact that most of the complaints identified by CAC are related to procurement, it is recommended that the mechanisms for monitoring and reporting on complaints and investigation identify those in the area of public procurement.
	There is no information that the system for suspension/debarment provided for in the PPL is enforced.	H	Prepare a 'user-friendly' simple guide to the conduct of the process, combined with increased transparency – see recommendations at indicator 1(d)(c). Publish the list of the debarred bidders on the procurement-portal.
14 (d) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that	The anti-corruption framework (both legal and institutional) is comprehensive but, while in progress, not all mechanisms of the recently adopted (2020) anti-corruption law have been implemented.	M	Continue developing enforcement mechanisms particularly in the following areas: self-declaration of conflict of interest, cooling-off period, whistle-blower protections and integrity training. (CAC is also contemplating the development of an Integrity pact that

SI	Substantive or material gap Red flag *	Risk	Recommendation
involves the appropriate agencies and supported by training.	There are no special integrity training programs organized and offered regularly by procuring entities, the MoF and/or CAC to the procurement workforce.		can support transparency, fairness, and integrity in the procurement process). Develop integrity training programs in collaboration with CAC.
14(e) Credible CSOs that exercise social audit and control in an environment that contribute to improve integrity in procurement. Suppliers adopt internal compliance measures.	*There are CSOs/NGOs involved in social audit and governance but none of them are currently addressing procurement issues except sporadically. There is no framework for consultation in this area and no evidence that civil society contributes to shape and improve integrity of public procurement. The private sector needs to be more engaged in the anti-corruption agenda.	H	Create an enabling environment for consultation in public procurement. Engage CSOs/NGOs involved in governance/PFM and social audit to build their capacity to conduct oversight of public procurement and train them to play a meaningful role in social audit and control. CAC to engage the private sector to elicit its support in the anti-corruption agenda including in further developing internal compliance measures and code of ethics.
14(g) There is a code of conduct or ethics for government officials, with particular provisions for those involved in PFM, including procurement. Integrity training and disclosure forms for conflict of interest, assets and beneficial ownership are available.	There is a code of conduct approved before the anti-corruption law was enacted it does not reflect the new principles brought about by the anti-corruption legislation. There are no regular training programs to sustain awareness and implementation of the anti-corruption law only ad hoc dissemination/sensitization events. The financial disclosure is in its early stages of implementation. There are no templates yet for conflict-of-interest declaration by civil servants involved in procurement. Beneficial	L M M H	It could be beneficial to update the code of conduct to make it consistent with the additional requirements under the anti-corruption law. As recommended by the same law, a special code of conduct could be prepared for public procurement, since it is a high-risk area vulnerable to corruption. CAC to step up these activities in partnership with internal and international stakeholders and deliver these events more regularly (also part of the CAC Strategic Plan). Continue enforce the financial disclosure and monitor procurement officials, given that procurement is a high-risk area. Mainstream the requirement to declare the conflict of interest by the public servants who participate in the procurement process (including members of the evaluation

SI	Substantive or material gap Red flag *	Risk	Recommendation
	ownership requirements are not in the bidding documents.		committee) and provide templates to support declaration process. Make sure that the PPL secondary legislation, bidding documents, instructions, include provisions regarding beneficial ownership requirement to ensure its effective implementation.

SI	Area for improvement recommendation
14(f) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	While CAC has established a portal to this effect, public institutions are yet to offer information to the public on their organization and how to report (including anonymously) potential cases of corruption (Anti-corruption law A. 28).

4. Consolidated Recommendations

408. The MAPS assessment has identified several areas for improvement the details of which are highlighted in the relevant sections and volumes of this report. The chapter summarizes the priority areas that need to be addressed given their impact on the performance of the Timor-Leste procurement systems.

Improve the legal and regulatory framework in areas that require strengthening as identified by this MAPS assessment to foster efficiency, competition, transparency, fairness and value for money.

409. **Given that a new PPL has just been adopted the focus should be on making appropriate implementation arrangements and developing enforcement/procedural tools** (secondary legislation/regulations and guidelines and updated/new standard bidding documents). By so doing, the users can (a) familiarize themselves with the full procurement legal framework and prepare necessary standard documents in advance for their own use; and (b) avoid an ‘implementation gap’ which can occur if primary legislation is in force but there is a lack of supporting documents aligned with the new legislation.

410. **Some of MAPS recommendations will be immediately addressed by the enforcement of the new law.** They refer to specification of minimum timescales for submission of proposals and publication of sufficient information on subject matter of the contract in the call for competition notice, listing of specific offenses triggering disqualification,¹³⁹ use of neutral and functional specifications and recognition of equivalent standards, publication of relative weights allocated to evaluation and award criteria, protection of confidential information, listing of remedies available in hierarchical appeal and inclusion of a specific provision for right of judicial appeal in respect of decisions on hierarchical review, and provisions allowing for the use and rollout of e-procurement. It is important to ensure that these provisions flow through consistently into the guidelines and standard procurement documents

411. **MAPS recommendations to further strengthen the legal and regulatory framework** (to address gaps¹⁴⁰ that have not been resolved under the new law) include the following:

- **Strengthen the appeal mechanisms** by undertaking a critical study of the data available and stakeholders’ views on the operation of the current system of hierarchical review to assess the level of independence of decision-making, and confidence in and effectiveness of the operation of the system in practice.
- **Develop a Sustainable Procurement Strategy** to identify the optimal approaches for a balanced and effective application of procurement and a performance evaluation tool with feedback mechanism for its continuous enhancement.
- **Include new provisions in the procurement legal framework** to promote increased transparency, fairness, and overall effectiveness of government procurement such as:
 - Publish rules for participation of SOEs enterprises that promote fair competition and ensure a level playing field for all competitors;

¹³⁹ Such as: ensuring protection of trade secrets and proprietary information and protection of privacy, clearly identifying the offenses related to terrorism, money-laundering/terrorist financing, child labor and trafficking as grounds for exclusion/disqualification in the PPL, and enabling the implementation of e-procurement.

¹⁴⁰ For a complete list of areas that require improvement see the high-level summary Annex 10 Volume III.

- Publish applications and decisions for/on hierarchical appeal;
- Prepare detailed provisions defining the functions and assigning responsibilities for undertaking contract management including monitoring and supervision of contract delivery and monitoring contract performance;¹⁴¹
- Improve clarity on whether and to what extent use of standard bidding documents is mandatory and require the inclusion of provisions on fraud and corruption in the bidding documents; and
- Include provisions in the procurement legislation requiring tenders to be opened immediately following the date for submission, except in specified circumstances.

Improve the institutional clarity to assign procurement normative/regulatory functions without gaps and overlaps and develop a coordinating mechanism for public procurement to provide leadership and support a harmonized/cohesive management of public procurement in Timor-Leste.

412. The government should consider conducting a critical and evidence-based review by commissioning a study of the actual setup and performance of the agencies in charge of the normative and regulatory functions as well as the agencies involved in operational procurement: MoF,¹⁴² ADN, Infrastructure Fund institutions, MoPW and other line ministries and procuring agencies. The objective is also to create a coordinating mechanism to ensure leadership and cohesiveness and unity of action and purpose, in the operation and monitoring of the public procurement system in Timor-Leste. The review will recommend the measures to adjust and strengthen the roles and resources of these agencies to be able to efficiently carry out the assigned responsibilities to optimize quality and timeliness of the procurement outcomes and support the implementation of the new Decree-Law. The government should consider updating CNA operational regulation to clarify its organizational structure, resources, and responsibilities for it to effectively carry out its tasks under the new PPL 2022.

413. Based on the study conclusions and the preferred option, the government could make the institutional adjustments needed to provide clarity on the roles of the key procurement players, funding consistent with their roles and, overall, ensure cohesiveness in the operation of the public procurement system in Timor-Leste to adequately inform the central government and better support the national government objectives.

Strengthen the capacity of the public procurement workforce and develop a roadmap for public procurement professionalization.

414. It is recommended to address immediate needs related to the enforcement of the new law. This would include activities that can support the enforcement of the PPL 2022 such as conducting crash courses for the procuring entities and suppliers to advise them on the key changes in the new procurement framework; and developing CNA capacity to handle its multiple functions including those assigned to it under the new PPL.

¹⁴¹ More detailed provisions could be incorporated in the standard contractual documents

¹⁴² Including departments that may have a role in the public procurement reforms such as: Legal Office, CNA, the Office of Integrated Management Information Systems and Office for Policy, Reforms and Capacity Building in Public Financial Management

415. **At the same time there is need for developing a strategic vision and medium long-term program** for the procurement workforce capacity building such as

- Formulate a procurement capacity-building strategy informed by TNA and design needs-based training programs and training materials for public procurement workforce and private sector actors and
- Develop a roadmap for certification and professionalization of the procurement function.

416. **The rollout of the capacity-building program** should be supported by building a pool of procurement trainers to conduct in-person training in parallel with the rollout of e-learning courses on public procurement including contract management to enable quick 'intermediate' certification of public procurement workforce. In this process, it is important to foster partnership with one or two training centers or higher education institutions for the establishment of sustainable procurement capacity-building mechanism in Timor-Leste.

Establish a public procurement performance monitoring and measurement mechanism to support improved procurement outcomes and evidence-based policy formulation.

417. **It is recommended that in the short term the government takes stock of the data provided on GRP/IFMIS/online portal** and enable the system to aggregate and analyze existing procurement data and generate a few KPIs and regular reports for management use.

418. **In the longer term the government needs to develop a comprehensive national framework for monitoring and measuring the performance** of public procurement, supported by technology, to optimize and regulate spending, quality, time, and cost. To this end, conduct a needs assessment and, on this basis, select the appropriate mechanisms and tools including a set of relevant KPIs to be used to evaluate and monitor the procurement efficiency throughout the procurement cycle. Subsequently roll out the performance measurement system consistent with the e-procurement system that is expected to be developed in parallel.

Launch the e-procurement agenda in Timor-Leste to promote an efficient, transparent procurement.

419. **The government may consider launching the e-procurement agenda**, by undertaking a readiness assessment along with a strategic study and implementation roadmap considering the entire e-government ecosystem. The implementation roadmap will define the options for the gradual establishment and rollout of a full-fledged e-procurement system as well as the related 'good fit business model'. Once the most appropriate option is agreed upon, this will be followed by the implementation of the change management agenda and rollout of the system.

420. **In the short term, public procurement would benefit from improving the procurement portal** – completeness, accuracy, timeliness, downloadability, searchability, and links to actual bidding documents

Improve the operational efficiency of public procurement by promoting a more strategic approach to procurement and contract management

421. **Recommendations are aimed at adopting a more strategic approach** by strengthening planning, market research and engagement as part of the procurement preparation particularly for high-value/high-risk contracts or whenever the market conditions are not fully known. Such techniques will support the

selection of 'fit-for purpose' procurement approaches by identifying among others, the appropriate market segments likely to participate to maximize competition and the participation of responsive bidders.

422. It is further recommended to

- Revisit/update the Best Practice Guides and provide tools to support strategic procurement planning including procurement and contract strategies, market research and engagement, use of functional specification, and use of sustainability considerations;
- Assess the possibility to use framework contracts to generate economies of scale and achieve value for money particularly for recurrent procurement including in cases of emergency; and
- Develop contract management monitoring guidance and training and strengthen ADN and line ministries' supervisory capacity.

Foster private sector effective participation in procurement and support the government objective to develop the national market while ensuring value for money.

423. Recommendations focus on creating the enabling environment for the private sector to participate in the public procurement market, removing actual and potential barriers, and building private sector capacity to submit responsive bids.

- Carry out the contractors' certification/classification in a fair, transparent, and efficient manner based on clear standard procedures.
- In collaboration with the private sector associations and relevant education institutes, develop training programs to build the private sector capacity, to be able to access procurement information, understand the requirements and submit successful bids. Develop a consultative mechanism to elicit the private sector views to improve the system operation, and address constraints that negatively affect the private companies' effective participation in the public procurement market.

424. Both the procuring entities and the private companies could benefit from standard/sample bidding documents in Timor-Leste official languages for use in procurement procedures which are conducted in official language/s, aligned with Timor-Leste procurement legal framework in force (and updated to reflect changes in law), proportionate to the need and covering a wider range of procurement approaches from simple to complex.

Strengthen integrity in procurement and ensure proper oversight by both state and non-state actors.

425. Recommendations target strengthened oversight and a more robust enforcement and monitoring of the integrity requirements in procurement and include (a) developing a more robust procurement control and audit system supported by standard procedures and auditors' training in the area of procurement; (b) strengthening the implementation of the complaint mechanism in the short term to make it more transparent while conducting a more in-depth analysis in the medium term; (c) promoting increased oversight of administrative debarment process and debarment decisions (for example, by way of centralized monitoring) as well as greater transparency to ensure that the approach adopted is consistent and proportionate; (d) creating the mechanisms for further enforcement of the other integrity systems (asset declaration, beneficial ownership, cooling-off period, self-declaration of conflict of interest,

whistle-blower protection) supported by statistics with clear identification of procurement cases, to inform the procurement policy; and (e) developing a consultative process through a formal mechanism to engage civil society and enable the civil society effective procurement oversight.

426. Some specific activities may include the following:

- Develop forms for procurement staff to declare conflict of interest and commit to integrity and confidentiality.
- Prepare procurement guidance for auditors and include it in the auditors' training programs.
- Prepare and publish a user-friendly guide on the conduct of debarment and appeal proceedings to ensure consistency and clarity and increase private sector confidence.
- Increase transparency by publishing more information on procurement and contract management, for example, financial and physical implementation of major contracts (including amendments), copies of decisions on appeals (that is, hierarchical appeals/debarment), direct award (*ajuste directo*), and related statistics.
- Ensure that the integrity requirements (including the beneficial ownership disclosure) are reflected in the secondary public procurement legislation, bidding documents and guidance, as appropriate, to allow for effective enforcement.
- Develop a system to identify and collect statistics specific to procurement, related to complaints, reports on cases of fraud and corruption, sanctions cases, compliance with asset declaration and beneficial ownership requirements - to enable more targeted policy formulation in this highly vulnerable area; integrate these functions in the e-procurement system.
- Consider developing a code of ethics for the public agents involved in procurement, aligned with the anti-corruption regulations, to address specific integrity risks in the area of public procurement; it may be complemented by the development of an 'integrity pact' to consolidate all the integrity activities in the area of public procurement for government and private sector companies.

5. Strategic Planning

427. Based on the MAPS assessment key findings and recommendations, a strategic action plan has been suggested with a strategy for implementation to be decided by the government. The implementation strategy needs to be realistic, aligned with other reform initiatives, ensuring a balance of objectives, with results framework and KPIs to support effective monitoring.

428. The following table presents the key recommendation actions and suggests a timeline as short term (ST), medium term (MT), long term (LT) or through continuous improvements along assigning responsibilities to the concerned parties.

Table 21: Strategic Action Plan

Recommendation	Specific actions	Timeline	Responsible	Expected outcomes
Strengthen the legal and regulatory framework and ensure readiness for its timely implementation	<ul style="list-style-type: none"> Assign clear responsibilities for the implementation of the new law. Issue implementing regulations/instructions/guides, as appropriate, aligned with the new legal framework. Develop standard bidding documents aligned to the new law and covering wider range of procurement. <p><i>Quick win: Publish all the documents comprising the new legal and regulatory framework in a single location and make them available in the official and working languages used by procurement stakeholders in Timor-Leste.</i></p>	ST/MT ST	MoF	<p>Timely implementation of the legal and regulatory framework.</p> <p>Ensuring a coordinated approach to the implementation of the new law and public procurement reforms in general.</p>
Develop a coordinating mechanism for public procurement	<ul style="list-style-type: none"> Conduct a critical and evidence-based review of the actual setup and performance of the agencies in charge of the normative and regulatory functions as well as the agencies involved in operational procurement. <p><i>Quick win: Review and update of CNA operational regulation to clarify its organizational structure, resources, and responsibilities for it to effectively carry out its responsibilities assigned by PPL 2022.</i></p>	MT ST	MoF	<p>Ensure clear assignment of the normative/regulatory functions among institutions without gaps and overlaps and support harmonized/cohesive management of public procurement in Timor-Leste.</p>
Establish a public procurement performance monitoring and measurement mechanism	<ul style="list-style-type: none"> Develop an operational framework for monitoring and measuring the performance of public procurement to enable the government to optimize and regulate spending, quality, time, and cost. 	MT	MoF	<p>Support improved procurement outcomes and evidence-based policy formulation.</p>

6. Information regarding Validation

429. Chapter 1 of the report provides a chronology on all consultations till stakeholder validation was carried out. Before the final stakeholder validation, several consultations were held with the MoF. All the details on consultation are covered in the Annex 7 of Volume III of the Report

Table 22: Validation timeline

S. No.	Description	Outcome	Date
1.	Validation workshop with Stakeholders.	Validation of the assessment findings and recommendations. Positive feedback received during the validation workshop and some of them already incorporated in the report.	October, 2022
2.	Decision Meeting by the World Bank Management after internal peer-review	MAPS ASA approval	February 2023
3.	Review by assessment's Technical Advisory Group	ATAG's review of the draft report	July 2023
4.	Final MAPS Report	Finalized report incorporating comments and feedback received from validation, workshop, World Bank, and ATAG.	October 2023
5.	Certification by MAPS Secretariat		December 2023
6.	Dissemination/ Publication of the final MAPS Report		April 2024

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Indicator Matrix

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*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Note on new public procurement law published in 2022: The new public procurement Decree Law No.22 of 2022, on “Legal Regime for Procurement, Public Contracts and Related Infringements”¹ (“PPL 2022”) was adopted by the Council of Ministers on 4 May 2022 and published in the Official Gazette (*Jornal da República*) on 11 May 2022. A.197 PPL 2022 provides that PPL 2022 shall come into force on 1 January 2023.

A.193 PPL 2022 revokes the current public procurement law PPL 2005 (Decree Law No.10 of 2005 Public Procurement Regime) , as well as other procurement related laws governing the current procurement legal framework, being: Decree Law No.11 of 2005 Public Contracts Legal Regime, Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime, Decree Law No.2 of 2009 Special regime for Drugs and health equipment procurement (SAMES) some of the provisions of Decree Law No.28 of 2014 regulating the procurement regime for the acquisition of goods and services within the Special Administrative Region of Oecusse (RAEOA), excluding Ataúro.

The analysis and assessment of the procurement legal framework and identification of related Gaps and recommendations in this MAPS assessment are based on the procurement legal framework in force at 31 December 2021 (“current legal framework”). The report and indicator matrix does not therefore provide an exhaustive analysis of the PPL 2022. The Assessment Team recognizes, however, that when the PPL 2022 comes into force in 2023 it will address and resolve a number of issues identified as Gaps in the current legal framework. These positive developments in respect of Gaps identified under the current legal framework are noted in the analysis in in this Matrix together with comment when an identified Gap under the current legal framework has not been resolved in PPL 2022. Some additional general notes on the content of PPL 2022 are included for information purposes. The Assessment Team has relied on machine translated versions of PPL 2022 from the original Portuguese to English.

¹ Decree Law No. 22 of 2022, on Legal Regime for Procurement, Public Contracts and Related Infringements [Regime Jurídico do Aproveitamento, dos Contratos Públicos e das Respetivas Infrações] (DL 22/2022)

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Pillar I. Legal, Regulatory, and Policy Framework

1. The public procurement legal framework achieves the agreed principles and complies with applicable obligations.

1(a) Scope of application and coverage of the legal and regulatory framework

The legal and regulatory body of norms complies with the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures), and precedence is clearly established.	<p><i>Summary: The legal framework for procurement is contained in a collection of Decree Laws which are stable laws, clearly placed in the hierarchy of laws with precedence established. There are no ministerial regulations implementing the Decree Laws on procurement, although these are envisaged in the Decree Laws. Decree Laws are supported by best Practice Guides which are more flexible instruments. Provisions of PPL 2005 do not apply where they are incompatible with obligations in international treaties or international agreements.</i></p> <p>The Constitution of the Democratic Republic of East Timor (2002) ("Constitution")² is the highest source of law. Section 3 of the Constitution provides that all laws and action of the State and local Government must be in compliance with the Constitution. S.92 of the Constitution confirms that the National Parliament is the organ of sovereignty of the Democratic Republic of East Timor, vested with legislative supervisory and political decision-making powers. S.95 of the Constitution sets out the competence of the National Parliament and lists matters which are within the exclusive competence of the National Parliament in terms of law making. S.96 of the Constitution provides that the National Parliament may authorize the Government to make laws on</p>		Criterion met		

² Constituição da República Democrática de Timor-Leste, 2002 http://www.mj.gov.tl/jornal/public/docs/ConstituicaoRDTL_Portugues.pdf

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p>listed matters, including general rules and regulations for the public service, the status of civil servants and the responsibility of the State, and General bases for the organization of public administration. Timor-Leste also has a Civil Code³ and a Penal Code.⁴</p> <p>Both parliament and government have legislative powers. The parliament approves Laws (<i>lei</i>) proposed by members of parliament or the government. The government, in the form of the Council of Ministers, approves Decree Laws (<i>decreto-lei</i>)⁵ Legislation is enforceable only after publication in the Official Journal (<i>Jornal da República</i>).</p> <p>Public procurement laws: The public procurement legal framework is set out in a collection of Decree Laws listed on the Ministry of Finance (“MoF”) website procurement page, with some available to download, in English only, from that page:</p> <ul style="list-style-type: none"> Decree Law No.10 of 2005 Public Procurement Regime,⁶ as amended by the following Decree Laws: No.14 of 2006⁷, No.24 of 2008⁸, No.1 of 2010⁹, No.15 of 2011¹⁰, No.38 of 2011¹¹ and No.30 of 2019¹² and No.5 of 2021.¹³ (“PPL 2005”). 				

³ Código Civil, Aprovado pela Lei 10/2011, de 14 de Setembro http://www.mj.gov.tl/jornal/files/Codigo_Civil.pdf

⁴ Código Penal, Aprovado pelo Decreto-lei 19/2009, de 8 de Abril, com base na autorização legislativa conferida pela Lei 13/2008, de 13 de Outubro, e alterado pela Lei 6/2009, de 15 de Julho http://www.mj.gov.tl/jornal/files/Codigo_Penal.pdf

⁵ “DL” is used in the analysis in this Matrix to refer to Decree Laws. All references to Laws, Decree Laws, Decrees are to those provisions, as amended, unless otherwise specified.

⁶ Decree Law No.10 of 2005 Public Procurement Regime. Jornal da República https://mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/11_2005.pdf

⁷ Decree Law No.14 of 2006. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2006/serie_1/serie1_no16.pdf

⁸ Decree Law No.24 of 2008. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2008/serie_1/serie1_no31.pdf

⁹ Decree Law No.1 of 2010. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2010/serie_1/serie1_no8.pdf

¹⁰ Decree Law No.15 of 2011. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no12.pdf

¹¹ Decree Law No.38 of 2011. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no31.pdf

¹² Decree Law No.30 of 2019. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2019/serie_1/SERIE_I_NO_48_D.pdf not available from MoF website.

¹³ Decree Law No.5 of 2021. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2021/serie_1/SERIE_I_NO_17_B.pdf not available from MoF website.

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	<ul style="list-style-type: none"> Decree Law No.11 of 2005 Public contracts legal regime¹⁴ ("DL 11/2005" or "Public Contracts Law") Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime¹⁵ ("DL 12/2005") Decree Law No.29 of 2009 Priority projects¹⁶ ("DL 29/2009") Decree Law No.2 of 2010 Special procurement procedures for awarding construction work up to USD 250,000 to local companies located in sub-districts¹⁷ ("DL 2/2010") Decree Law No.11 of 2011 National Development Agency¹⁸ (<i>Agencia de Desenvolvimento Nacional</i>) ("ADN") ("DL 11/2011") Decree Law No.14 of 2011 Establishing the National Procurement Commission (<i>Comissão Nacional de Aproveitamento</i>) ("CNA"), revoking Decree law No.3 of 2010¹⁹ ("DL 14/2011"). <p>A consolidated version of PPL 2005, showing all amendments made since 2005 is not available from the MoF website. Some of the decree laws amending PPL 2005 are not available from the MoF website. DL 3/2010 is listed on the MoF website, but it was repealed by DL 14/2011.</p> <p>Original Portuguese language versions of Decree Laws are available, on-line, from the Official Journal (Jornal da República) website http://www.mj.gov.tl/jornal/</p>				

¹⁴ Decree Law No.11 of 2005 Public contracts legal regime. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/11_2005.pdf

¹⁵ Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/12_2005.pdf

¹⁶ Decree Law No.29 of 2009 Priority projects. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no38.pdf

¹⁷ Decree Law No.2 of 2010 Special procurement procedures for awarding construction work up to USD 250,000 to local companies located in sub-districts. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2010/serie_1/serie1_no8.pdf

¹⁸ Decree Law No.11 of 2011 National Development Agency Jornal da República. http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no11.pdf

¹⁹ Decree Law No.14 of 2011 Establishing the National Procurement Commission. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no12.pdf

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	<p>Public Procurement in the Special Administrative Region of Oecusse (RAEOA): Decree Law No. 28 of 2014 ²⁰ ("DL 28/2014") regulates the procurement regime for the acquisition of goods and services within the Special Administrative Region of Oecusse (RAEOA), excluding Ataúro (see sub-Indicator 1(b)).</p> <p>Implementing Regulations, Standard Procurement Documents and Best Practices Guidance: There are no Regulations implementing the PPL 2005 (see sub-indicator 2(a)). Standard Procurement Documents and a series of Best Practice Guides covering the whole procurement cycle, from planning to contract management are available to download from the MoF website procurement page.^{21 22} The Standard Procurement Documents are, in practice, sample documents rather than templates. They were published in 2010/2011 and have not been updated (see sub-indicator 2(b)). Brief descriptions of the Best Practice Guidance are available in English, Portuguese and Tetum but the full Best Practice Guidance documents are available only in English and have not been updated recently. (see sub-indicator 2(c))</p> <p>Compatibility with international rules S.9(2) of the Constitution provides that rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of Timor-Leste following their approval, ratification or accession by the respective competent organs and after publication in the Official Journal. Section 9(3) provides that all rules that are contrary</p>				

²⁰ Decree Law No.28 of 2014 Special Procurement Regime for RAEOA. [Regime Especial de Aprovisionamento para a Região Administrativa Especial de Oe-Cusse Ambeno]. Jornal da República https://mj.gov.tl/jornal/public/docs/2014/serie_1/SERIE_I_NO_32.pdf

²¹ <https://www.mof.gov.tl/government-procurement/procurement-documents-templates/?lang=en> Accessed 14 December 2020, checked 07 January 2022

²² <https://www.mof.gov.tl/government-procurement/guide-to-government-procurement/?lang=en> Accessed 2 December 2020, checked 07 January 2022

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p>to provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid.</p> <p>A.12 PPL 2005 provides for the principle of compatibility with international rules and confirms that the PPL 2005 shall not apply where it contradicts an international legal obligation undertaken by the Democratic Republic of East Timor (RDTL) by virtue of a treaty or other form of international agreement which the RDTL has entered together with one or more countries and an agreement between the RDTL and an international funding institution.</p> <p>PPL 2022: The new public procurement Decree Law No.22 of 2022, on “Legal Regime for Procurement, Public Contracts and Related Infringements”²³ (“PPL 2022”) was adopted by the Council of Ministers on 4 May 2022 and published in the Official Gazette (<i>Jornal da República</i>) on 11 May 2022. PPL 2022 revokes PPL 2005, DL 11/2005 Public Contracts Legal Regime and DL 12/2005 Administrative infractions of the Procurement Judicial Regime and consolidates the legislation covering procurement, public contracts and infringements in a single law.</p> <p>When it comes into force PPL 2022 will also revoke Decree Law No.2 of 2009 Special regime for Drugs and health equipment procurement (SAMES), as amended ²⁴ (“DL 2/2009”) and some provisions in DL 28/2014 regulating the procurement regime for the acquisition of goods and</p>				

²³ Decree Law No. 22 of 2022, on Legal Regime for Procurement, Public Contracts and Related Infringements [Regime Jurídico do Aproveitamento, dos Contratos Públicos e das Respetivas Infrações]. Jornal da República https://mj.gov.tl/jornal/public/docs/2022/serie_1/SERIE_I_NO_19.pdf

²⁴ Decree Law No.2 of 2009 Special Procurement Regime for SAMES [Regime Jurídico Especial de Aproveitamento do Serviço Autónomo de Medicamentos e Equipamentos de Saúde, E.P (SAMES)], as amended by Decree Law No.12 of 2016.

Jornal da República https://mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no2.pdf

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	services within the Special Administrative Region of Oecusse (RAEOA), bringing these regimes within the coverage of PPL 2022.				
(b) It covers goods, works and services, including consulting services for all procurement using public funds.	<p><i>Summary: the legal framework covers the procurement of goods, works and services, including consulting services by Public Services (procuring entities) using General State Budget and expenditure using other financial expenditure using financial resources in the possession of, or controlled by public services. This includes procurement by the infrastructure Fund (Fundo das Infraestruturas) ("FI") and the Human Capital Development Fund (Fundo de Desenvolvimento do Capital Humano) ("FDCH"). Special procurement regimes apply to: procurement of equipment for use by military, policy and security services and where special security measures apply o There are also special regimes for procurement by the central procurement body operating in the health sector (SAMES) and procurement in the Special Administrative Region of Oecusse (RAEOA). PPL 2022 removes the special regime for SAMES and amends the procurement regime for RAEOA, bringing them both within the coverage of the PPL 2022. PPP procurement is governed by a separate PPP law.</i></p> <p>A.2(1) PPL 2005 provides that the scope of the application of the PPL 2005 is public service procurement procedures undertaken using the General State Budget or expenditure using other financial resources in the possession of, or controlled by, such public services. A.2(2) PPL 2005 provides that the PPL 2005 applies to the acquisition of goods, services and works for public purposes.</p>		Criterion met		

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	<p>The Infrastructure Fund (<i>Fundo das Infraestruturas</i>) ("FI")²⁵ and Human Capital Development Fund (<i>Fundo de Desenvolvimento do Capital Humano</i>) ("FDCH")²⁶ fall within the definition of the State Budget and procurement using those funds are subject to the PPL 2005.²⁷ The Petroleum Fund (<i>Fundo Petrolifero</i>) does not fall within the definition of the State Budget and is not subject to the PPL, but legally permitted expenditure by the Petroleum Fund is limited.²⁸</p> <p>A.3 PPL 2005 defines "Procurement" as the purchase of goods, the execution of work and rendering of services which have a public purpose. Procurement of goods or supply includes the purchase, civil lease (including real estate), and financial lease with or without option to purchase and may include goods or services (assembly and maintenance) provided as part of a works contract. Works include repair, maintenance and building of facilities for public purposes and includes professional activities [services] in civil engineering and other similar services as well as engineering project and supply of material resources required as part of the works project. Services are broadly described, to cover services provided by an individual or company to a public service [entity] or a third party [funded by that public service] and is defined to include incidental goods/supplies or works required for delivery of the service.</p>				

²⁵ Infrastructure Fund (Fundo das Infraestruturas) (FI): Decree Law No. 13 of 2016 Regulating the Infrastructure Fund [Regulamenta o Fundo das Infraestruturas] governs and sets the rules for the Infrastructure Fund. Jornal da República https://mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_19.pdf

²⁶ Human Capital Development Development (Fundo de Desenvolvimento do Capital Humano) (FDCH) was established through State Budget Law (OGE) 1/2011, of 14 February 2011. The FDCH is governed by Decree Law 12/2011, of 23 March as amended by Decree Law (DL) 11/2015, of 3 June, and Ministerial Diploma 9/2011, of 13 April. Source: <http://www.fdoch.gov.tl/en/> accessed 4 December 2020, checked 07 January 2022

²⁷ Confirmed in discussion between the Assessment Team and MoF.

²⁸ "The only legally permitted expenditure by the Petroleum Fund is related to its investment policy or through direct transfers to the State Budget. Therefore, there cannot be any procurement paid directly by the Fund to the benefit of the State." Clarification provided by MoF in e-mail, 21 September 2020.

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	<p>Consultancy services fall within the wider definition of services and are not subject to separate legal provisions.</p> <p>Special procurement regimes A.2(3) PPL 2005 provides that, without prejudice to the general principles of the PPL 2005, there are a number of special procurement regimes. A.2(3) PPL 2005 lists the following special procurement regimes, being those:</p> <ul style="list-style-type: none"> • relating to equipment and items that are essentially of a military, police and national intelligence service nature. • subject to special security measures pursuant to legislation in force in the RDTL or to international norms. • Procurement falling under the competences of the Autonomous Service for Medicines and Health Equipment (<i>Serviço Autónomo de Medicamentos e Equipamentos de Saúde</i>) ("SAMES"), for the purchase of drugs, medical consumable and medical equipment required for the functioning of the health system as well as services and works execution within the competences of SAMES. [For more detail, see sub-indicator 1(l)(a) Specialised legislation]. <i>See note below on PPL 2022 which will revoke this Decree Law.</i> • Any other procurement procedures the Government decides to regulate separately (see sub-indicator 1(b)(a)). <p>Public Procurement in the Special Administrative Region of Oecusse (RAEOA): DL 28/2014 regulates the procurement regime for the acquisition of goods and services within the Special Administrative Region of Oecusse (RAEOA), excluding Ataúro. The President of the RAEOA Authority has the power to authorize directly the procurement procedure and approve adjudication up to a USD 5 million threshold, while procurement processes above that threshold require the authorization and adjudication by the RAEOA Authority</p>				

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	<p>(that is ultimately also chaired by the President). The President is the only authority within the region with power to sign public contracts. <i>See note below on PPL 2022 which will revoke some provisions in this Decree Law and bring RAEOA procurement within the coverage of PPL 2022.</i></p> <p>Award of contracts for construction works to local companies in accordance with District Integrated Development Planning (PDID) system procurement regime: DL No.4 of 2012 (DL 4/2012)²⁹ established a new district integrated development planning system (<i>Planeamento de Desenvolvimento Integrado Distrital</i>)(PDID), with provision for a special procurement regime. Decree Law No.11 of 2013 (DL 11/2013)³⁰ sets out the detailed public procurement regime for procurement at district level of construction works of a value up to USD 500,000 identified in the PDID by districts, sub-district and sucos. (See indicator 1(l)(a)).</p> <p>Public-Private Partnerships (PPP): Procurement of PPP is excluded from the PPL 2005 by A.11(2) PPP Law and covered by a separate regime (see sub- indicator 1(a (c))).</p> <p>PPL 2022: PPL 2022 applies to procurement procedures carried out by services and entities of the Administrative Public Sector or the contracts for acquisition or lease of goods, provision of services and execution of works (PPL A.2). Contracts excluded from application of PPL 2022 are listed in A.3 PPL, which also lists contracts to which PPL 2022 does not apply because they are subject to special procurement and contracting regimes, including public</p>				

²⁹ Decree Law No.4 of 2012 District Integrated Planning Development [Planeamento de Desenvolvimento Integrado Distrital]

https://www.mj.gov.tl/jornal/public/docs/2012/serie_1/serie1_no6.pdf

³⁰ Decree Law No.11 of 2013 District Integrated Planning Development (PDID) legal procurement regime [Regime jurídico de aprovisionamento do PDID]

http://www.mj.gov.tl/jornal/public/docs/2013/serie_1/serie1_no27.pdf

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	service concession contracts and contracts/other instruments regulated by the PPP legal regime..				
(c) PPPs, including concessions, are regulated.	<p><i>Summary: PPPs are regulated by a PPP Law.</i></p> <p>PPP Law Decree Law No.42 of 2012, as amended ³¹ (“PPP Law”) establishes the legal regime for the public-private partnerships for the development of public infrastructure.³² Procurement of PPP is specifically excluded from application of PPL 2005 by A.11(2) PPP Law. Public infrastructure, for the purposes of the PPP Law, includes energy, electricity, gas, transport, telecommunications, drinking water and wastewater, real estate, environmental management, housing prisons, courts, sports and leisure facilities, tourism development projects, convention centers, parks and property management; health facilities and services, including hospitals; and facilities and services in the education and training sector.³³ Decree Law No.8 of 2014 regulating the legal regime for implementation of PPP (“DL 8/2014”) establishes the institutional structures for PPP, as well as approvals processes.</p> <p>PPP activity has, to date, been very limited. In practice, a special PPP project-specific Decree Law has been passed</p>		Criterion met		

³¹ PPP Law: Decree Law No.42 of 2012 Legal Regime for Public Private Partnerships [Regime Jurídico das Parcerias Público-Privadas] No.42 of 2012, as amended by Decree Law No.2 of 2014 & Decree Law No.8 of 2014

³² Annex 1, PPP Law lists types of infrastructure projects.

³³ State Budget 2021 BB1 Budget Overviews.2.6.7 Public Private Partnerships refers to existing PPP Projects: Tibar Bay Port PPP(30 year concession signed June 2016) – implementation and operation stage; Medical Diagnostics (11 year concession period recommended, at procurement and implementation stage; Affordable housing, at feasibility stage; Development of President International Nicolau Lobato Airport “PPP Hybrid modality”, at feasibility stage; Cristo Rei PPP – Tourism facility, at feasibility stage.<https://www.mof.gov.tl/category/documents-and-forms/budget-documents/2021-state-budget/?lang=en>

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	<p>which includes additional provisions on the procurement of the PPP concerned.</p> <p>PPL 2022: A.3(a)(h) PPL 2022 excludes from application of PPL 2022 public service concession contracts and contracts/other instruments regulated by the PPP legal regime.</p>				
<p>(d) Current laws, regulations and policies are published and easily accessible to the public at no cost</p>	<p><i>Summary: The PPL and other procurement Decree Laws are accessible to the public at no cost from a dedicated page on the Ministry of Finance website and can be downloaded. The collection of legal framework documents available from the Ministry of Finance website is incomplete and out of date and a consolidated version of the PPL 2005 is not available.</i></p> <p>PPL 2005 and other procurement Decree Laws are published on the Ministry of Finance website and can be downloaded.³⁴ A.7 (3) PPL 2005 provides that the PPL 2005 and its complementary rules, administrative decisions and directives of general application relating to procurement procedure as well as modifications shall be immediately made public and systematically updated.</p> <p>However, the collection of laws downloadable from the MoF website is available in English language only and is not up to date or complete. For example, the 2019 and 2021 amendments to the PPL 2005 made by DL 30/2019 and DL 5/2021 are not referenced or available from the MoF website; DL 3/2010 Procurement Monitoring Commission and the Procurement Technical Secretariat and DL 14/2010 Temporary Procurement Measures are on the website but have been revoked.³⁵</p>		<p>Criterion partially met</p> <p>Legislation is accessible on-line, but it is not fully up to date and it is not presented in a consolidated and user-friendly format in official languages. This potentially hinders the ability of stakeholders to fully understand the legal framework and how it applies in practice, thus reducing accessibility in practice.</p>		<p>Ensure that all laws, regulations and policies are published on-line and are up to date. Accessibility could be further enhanced by providing consolidated version/s of the procurement law/s and publication in official language/s of the country.</p>

³⁴ <https://www.mof.gov.tl/category/documents-and-forms/procurement-documents/procurement-law/?lang=en> accessed 3 December 2020, checked 07 January 2022

³⁵ MoF website accessed 3 December, checked 07 January 2022

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	There are no Ministerial regulations implementing PPL 2005 (see sub-indicator 2(a)).				

1(b) Procurement methods

The legal framework meets the following conditions:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Procurement methods are established unambiguously at an appropriate hierarchical level, along with the associated conditions under which each method may be used.	<p><i>Summary: The legal framework lists seven competitive and less competitive procurement methods (procedures,) with associated requirements/conditions for use of each method. The legal framework provides that, as far as possible, preference shall be given to use of the Open procedure. Direct award is permitted only in exceptional circumstances and there are additional provisions in the legal framework concerning use of direct award for urgent acquisitions strictly necessary to deal with the emergency situation and satisfy immediate needs.</i></p> <p>A.6 PPL 2005 Principles of Good Faith and Proportionality, provides that the procedure to be adopted shall be chosen in accordance with its adequacy to the purposes to be achieved, as well as the costs and benefits.</p> <p>A.46 PPL 2005 provides that the choice of the type of procedure to be used lies with the entity competent to launch the procedure, except when authorization from a higher authority is required in accordance with the requirements of the PPL 2005.</p> <p>A.47 PPL 2005 provides that the choice of procedure shall depend on the contract value and the rules laid down in the law. It further provides that the chosen procedure shall be the most appropriate procedure to satisfy procurement needs.</p>		Criterion met		

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	<p>A.36 to 47 PPL 2005 set out the seven types of procedure available and conditions for use of the procedures. A.47(3) PPL 2005 provides that, as far as possible, preference shall be given to the Open tendering procedure (<i>concurso público</i>). The procedures listed in A.37 PPL 2005 are:</p> <ul style="list-style-type: none"> • Open procedure (<i>concurso público</i>), which is mandatory for all procedures of a value equal to or above USD 100 000 (USD one hundred thousand) • Limited tendering with pre-qualification (<i>concurso limitado por pré-qualificação</i>) • Restricted tendering (<i>concurso restrito</i>) • [Competitive] Negotiation or proposals in two stages (<i>negociação ou de propostas em duas etapas</i>) • Request for quotations (<i>solicitação de cotações</i>) • Direct award/agreement (<i>ajuste directo</i>) • Simplified procedure (<i>procedimento simplificado</i>) <p>Pre-qualification stage: A.49 PPL 2005 provides that a pre-qualification stage is mandatory for specified types of procurement: procurement relating to specially designed equipment; industry facilities; specialized services; turnkey contracts; design & build and management contracts; and contract over USD 250 000 (USD two hundred and fifty thousand); and in other cases provided for by law. A.48 PPL 2005 provides that, unless otherwise stipulated by law, the authority competent to launch the open procedures is also competent to decide whether pre-qualification will be used.</p> <p>A.38 & 39 PPL 2005 Open procedure (concurso público) A.38 PPL 2005 National open procedure (concurso público nacional): Use of national open procedure is mandatory for all procedures of a value equal to or below USD 100 000 (USD one hundred thousand). The national open procedure is aimed at giving preference to</p>				

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	<p>individual Timorese citizens and companies set up in Timor-Leste with at least 51% share capital held by Timorese citizens.</p> <p>A.39 PPL 2005 International open procedure (<i>concurso público internacional</i>): the international open procedure is aimed at encouraging participation of competitors from all over the world.</p> <p>Use: Use of international open procedure is compulsory in the following circumstances: construction [works] contracts over USD 1 million; contracts for the purchase of goods or technical services over USD 250 000 (USD two hundred and fifty thousand); contracts for consultancy services over USD 200 000 (USD two hundred thousand); where, following expiry of a pre-qualification procedure deadline, there are less than three competitors pre-qualified. In addition, A.39(4) PPL 2005 provides that where in a national open procedure no tenders are submitted or no competitors qualify or pre-qualify, the procuring entity may use an international open procedure.</p> <p>A.40 PPL 2005 Limited tendering with pre-qualification (<i>concurso limitado por pré-qualificação</i>)</p> <p>Conditions for use: A.40 PPL 2005 provides that limited tendering with pre-qualification may be used where the subject matter of the procurement is technically complex or high value, requiring prior assessment of the competitors' financial, commercial and technical capacities. A.49 PPL 2005 provides that a pre-qualification stage is mandatory for specified types of procurement (see above).</p> <p>A.41 PPL 2005 Restricted tendering (<i>concurso restrito</i>)</p> <p>Conditions for use: A.41(3) PPL 2005 provides that the restricted procedure may be used where the time and cost necessary to analyse and assess a large number of bids is disproportionate to the low value of the works, goods or services to be provided.</p>				

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	<p>A.42 PPL 2005 [Competitive] Negotiated procedure/negotiation or proposals in two stages (<i>negociação ou de propostas em duas etapas</i>)</p> <p>Conditions for use: A.42(1) PPL 2005 permits the use of negotiated procedure in two stages, in exceptional cases for the procurement of goods, complex works and services in the following cases (in summary): where the procuring entity is unable to accurately determine in advance the technical and contractual requirements, or inherent [contingencies/risks] due to the high level of specialization; or where the procuring entity needs to consider more than one bid or technical solution in order to decide which best meets its needs.</p> <p>A.43 PPL 2005 Request for quotations (<i>solicitação de cotações</i>)</p> <p>Conditions for use: A.43 PPL 2005 provides that request for quotations may be used when the value of the contract is less than USD 100 000 (USD one hundred thousand) for less complex goods, works or services which do not require the preparation of technical specification in advance.</p> <p>A.44 PPL 2005 Direct award/agreement (<i>ajuste directo</i>)</p> <p>Conditions for use: A.44(1) PPL 2005 provides that the procedure for direct award/agreement is an exceptional procedure permitted where special circumstances set out in A.92 PPL 2005 and A. 94 PPL 2005 apply.³⁶</p> <p>A.92 PPL 2005 sets out 10 circumstances where direct award is permitted. The circumstances justifying direct award must be documented. These are, in summary: (a) emergency due to unforeseen event where public health and security is jeopardised; (b) previous failed competitive bidding process; (c) where no competition exists due to technical reasons; (d) where goods or services may only be supplied by a specific entity and no</p>				

³⁶ A.44(1) PPL 2005 also refers to A.93, which was revoked by DL 24/2008.

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	<p>reasonable or substitute alternatives exist in the market; (e) for additional supply of goods or services to replace, extend or deliver goods or services where substitution of a supplier would result in incompatible goods or services; (f) for prototypes, for the purposes of limited experimentation or for research, experiment, study or an original creation; (g) to protect patents, copyrights or other exclusive or intellectual property rights; (h) procurement of commodities or purchases in advantageous conditions, including unsolicited innovative proposals; (i) as a result of a design competition; (j) for reasons of impracticability or inconvenience, duly justified and documented.</p> <p>A.45 PPL 2005 Simplified procedure (<i>por procedimiento simplificado</i>)</p> <p>Conditions for use: Simplified procurement procedures may be used for purchases of consumables, water, power, telecommunications and recurring expenses identified in the State Budget described in A.45(1) PPL 2005. A.45(2) PPL 2005 provides that the Minister of Planning and Finance may modify the scope of coverage of the simplified procedure by Ministerial Despatch (<i>despacho ministerial</i>).</p> <p>Urgent procurement</p> <p>A.94 and A.94A concerns use of direct award/agreement for urgent acquisitions PPL 2005. Direct award/agreement is permitted in the situations specified in A.94(1)(a) & (b) PPL 2005: where there is an urgent and unforeseen need, not attributable to the [procurement beneficiary], which means that use of a competitive procedure or any other procurement method is not feasible; or where there is an official declaration of catastrophe or emergency situation which requires the need to execute works, supply goods or deliver services in order to prevent loss of lives or government property or satisfy other demands requiring urgent action in the</p>				

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	<p>public interest. In this case, the procuring entity shall contract by direct agreement only for the goods, works or services strictly necessary to deal with the emergency situation and satisfy immediate needs.</p> <p>PPL 2005 was amended in April 2021 by DL 5/2021 in the aftermath of tropical cyclone Seroja, to insert a new Article 94A PPL 2005, permitting a simplified process (waiver) for direct award of contract and more flexibility in request for quotations procedure for use in defined cases of emergency, urgency and declaration of catastrophe.</p> <p>Response to COVID-19 pandemic: PPL 2005 was not amended in response to the COVID-19 pandemic as it already included sufficient provisions concerning direct award/agreement for urgent acquisitions.</p> <p>In October 2020, Decree Law No.48 of 2020 ("DL 48/2020")³⁷ created a special, short term, procurement regime for the procurement by local direct agreement of a basic basket of essential food, plus personal hygiene products for supply to the population. The goals were to stimulate the local economy, create income for farmers, agricultural producers and local traders in order to support and guarantee local supply, support families to meet basic needs and contribute to improvement of food and national diet of families affected by decreased income. The operation of the scheme was extended to February 2021 by Decree Law No.1 of 2021.³⁸</p> <p>PPL 2022: A.33 to A.36 PPL 2022 lists and describes three procurement procedures: Competition procedure – which may involve pre-qualification and pre-award</p>				

³⁷ Decree Law No.48 of 2020 creating special short term procurement regime for basic basket of essentials [Adota Medidas de Apoio às Famílias, mediante Atribuição de "Cesta Básica", e aos Operadores Económicos Locais, no âmbito do Plano de Recuperação Económica, e cria um Regime Especial de Aprovisionamento para o efeito]. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_41_A.pdf

³⁸ Decree Law No.1 of 2021 amending Decree Law No.48 of 2020. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2021/serie_1/SERIE_I_NO_2.pdf

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	negotiation, in specified circumstances; Request for quotes; and Direct award. A.38 PPL 2022 provides that as a general rule, Competition procedure should be used, whenever another procedure is not more appropriate. Request for Quotes and Direct Award are only available were permitted according to PPL 2022 and the contracting entity must justify their use. There are clear provisions on conditions for use and financial thresholds.				
(b) The procurement methods prescribed include competitive and less competitive procurement procedures and provide an appropriate range of options that ensure value for money, fairness, transparency, proportionality and integrity.	<p><i>Summary: The procurement methods prescribed include competitive and less competitive procurement procedures, with the possibility of "lighter" methods for lower value/lower risk procurements and use of a pre-qualification stage for more complex/higher value procurements as well as negotiated procurement method.</i></p> <p>A.38 & 39 PPL 2005 Open procedure (<i>concurso público</i>) Procedure: PPL 2005 A.37(1) provides that the Open procedure is a procedure where any interested competitor may submit a tender/proposal subject to meeting the necessary requirements in the tender documents. A.47(3) PPL 2005 provides that, as far as possible, preference shall be given to the Open procedure.</p> <p>PPL 2005 provides for two types of Open procedure: national open procedure and international open procedure</p> <p>Pre-qualification stage: A.49 PPL 2005 provides that a pre-qualification stage is mandatory for specified types of procurement: procurement relating to specially designed equipment; industry facilities; specialized services; turnkey contracts; design & build and management contracts; and contract over USD 250 000 (USD two hundred and fifty thousand); and in other cases provided for by law. A.48 PPL 2005 provides that, unless otherwise</p>		Criterion met		

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	<p>stipulated by law, the authority competent to launch the open procedures is also competent to decide whether pre-qualification will be used.</p> <p>A.40 PPL 2005 Limited tendering with pre-qualification (<i>concurso limitado por pré-qualificação</i>): Procedure: Where pre-qualification is used the invitation to tender is issued only to those competitors who pre-qualify.</p> <p>A.41 PPL 2005 Restricted tendering (<i>concurso restrito</i>): Procedure: The invitation to tender is issued only to suitable, registered suppliers. In this context, suitability may relate to geographic location, operation of a specific business activity or meeting specific requirement for the particular procurement procedure.</p> <p>A.42 PPL 2005 [Competitive] Negotiated procedure/negotiation or proposals in two stages (<i>negociação ou de propostas em duas etapas</i>): Procedure: In the first stage, the procuring entity requests competitors to submit plans, designs and technical studies but not financial quotations. The aim of the first stage is to permit the procuring entity to draw up specific procurement requirements. In the second stage, the procuring entity invites submission of definitive technical bids including financial quotations using the same rules as for the restricted procedure.</p> <p>A.43 PPL 2005 Request for quotations (<i>solicitação de cotações</i>): Procedure: The request for quotation is sent to at least three competitors known to the procuring entity which may award the contract without a tendering procedure.</p> <p>A.91 PPL 2005 provides those final proposals must be evaluated and compared by the procuring entity and the following general rules should be applied: (a) award to the proposal with the lowest price subject to any margin of preference applied to national competitors or for the benefit of proposals that involve local products. In</p>				

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	<p>practice, there are no domestic price preference provisions. (b) proposal with best quality/price ratio subject to conditions applying to bidders concerning debts due to the State, payment of taxes and demonstration of specialization in the activity concerned.</p> <p>A.44 PPL 2005 Direct award/agreement (<i>ajuste directo</i>): Procedure: Where direct award/agreement procedure applies the procuring entity may request one or more competitors to meet the procurement needs, without submission of tenders.</p> <p>A.45 PPL 2005 Simplified procedure (<i>por procedimiento simplificado</i>): Procedure: A.45 PPL 2005 sets out protocols for simplified procedures.</p> <p>Special procurement procedures A.2(6) PPL 2005 provides for the use of special procedures for the award of public works for civil construction works and public works involving an amount not exceeding USD 250,000 to local companies headquartered in sub-districts. This is regulated by Decree Law No.2 of 2010. This requires, in summary, advertisement in a newspaper with wide circulation as well as publicity at district level and at district level meeting. There are provisions covering the qualification of companies, with preference given to companies which have headquarters or works undertaken] in the district concerned.</p> <p>D: 29/2009 Special Procurement for Priority Projects provides for a special Request for Quotations (RFQ) procurement procedure for the named projects and permits use of direct award for small value projects, equal</p>				

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	to or less than USD 150,000, for flood control or rehabilitation of communication routes [roads]. ³⁹ PPL 2022: A.33 to A.36 PPL 2022 lists and describes three procurement procedures: Competition procedure – which may involve pre-qualification and pre-award negotiation, in specified circumstances; Request for quotes; and Direct award.				
(c) Fractioning of contracts to limit competition is prohibited.	<i>Summary: there is a provision in the PPL 2005 prohibiting fractioning of contracts to limit competition.</i> A.10 PPL 2005 Principle of unified expenditure (<i>Princípio da unidade da despesa</i>). PPL 2005 A.10(2) prohibits fractioning of contracts with the intention of avoiding application of the procurement regime. This includes division of acquisition costs into smaller lots so that none of them reach the relevant financial thresholds. PPL 2022: A.37(4) PPL 2022 prohibits fractioning of contracts with the intention of avoiding application of PPL 2022.		Criterion met		
(d) Appropriate standards for competitive procedures are specified.	<i>Summary: the legal framework restricts appropriately the discretion on choice of procurement procedures by requiring preferential use of open [competitive] procurement and placing conditions on use of less competitive procedure.</i> A.6 PPL 2005 Principles of Good Faith and Proportionality provides that the procedure to be adopted shall be chosen in accordance with its adequacy to the purposes to be achieved, as well as the costs and benefits. A.47(3) PPL 2005 provides that, as far as possible, preference shall be given to the open procedure. There are		Criterion met		

³⁹ The Assessment Team understand that the provisions for Special Procurement for Priority Projects is no longer used in practice. Confirmed in meeting between the Assessment Team and MoF.

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	<p>conditions on use of less competitive procedures which restrict individual agencies' or procurement officials' discretion.</p> <p>PPL 2022: A.10 PPL 2022 Principle of competition, provides that preference should be given to competition.A.38(1) PPL 2022 provides that as a general rule, Competition procedure should be adopted with discretion limited by financial thresholds and conditions applying to use of less competitive/non-competitive procedures.</p>				

1(c) Advertising rules and time limits

The legal framework meets the following conditions:

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(a) The legal framework requires that procurement opportunities are publicly advertised, unless the restriction of procurement opportunities is explicitly justified (refer to indicator 1(b)).	<p><i>Summary: PPL 2005 requires that procurement opportunities for competitive procedures are publicly advertised.</i></p> <p>A.7 PPL 2005 Principles of Transparency and Publicity: provides that the procuring entity shall ensure publicity of its contracting intention except where otherwise provided for by the PPL 2005 or other applicable regulations</p> <p>A.56(1) PPL 2005 lists the stages common to all competitive procurement procedures. The first stage, listed at A.56(1) is Opening and Publication (<i>Abertura e publicação</i>).</p> <p>A.57 PPL 2005 Open tendering (<i>concurso público</i>) requires the use of call for competition by means of publication of a notice. The notice shall contain, at least, the elements listed in Appendix 5 PPL 2005 (see sub-indicator 1(c)(d) for required content).</p>		Criterion met		

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	<p>Call for competition notice: A.61 PPL 2005 confirms that publication of notices is compulsory for the national open procedure, international open procedure and procedures using pre-qualification.</p> <p>Pre-qualification notice: A.50 PPL 2005 provides that where pre-qualification is used, a notice must be published in accordance with the requirements of the procedure to be used subsequently. The notice shall contain, at least, the elements listed in Appendix 5 PPL 2005 (See sub-indicator 1(c)(d) for required content).</p> <p>Announcement of pre-qualification decisions and contract award decisions: A.89 PPL 2005 requires the procuring entity to announce the [competition jury's] decision on the list of pre-qualified competitors or the intention to award the contract. The announcement, with reasons, must be placed "in the usual places used by" the procuring entity. The announcement must remain visible for at least 5 days after its publication for pre-qualification procedures and for at least 14 working days for competition procedures.</p> <p>PPL 2022: A.15 PPL 2022 requires compulsory advertisement on the Procurement Portal in both official languages. Procurement procedures using [invitation to tender] must also be advertised in at least one national newspaper in both official languages. Procurement exceeding USD1,000,000 (one million UD Dollars) must also be advertised on at least two international electronic platforms in any of the official or working languages. A.43 PPL 2022 lists the notice/advertisement as one of the stages required in the Competition procedure.</p>				
(b) Publication of opportunities provides sufficient time, consistent with the method, nature and	<i>Summary: General principles set out in PPL 2005 on calculation of deadlines require that there is sufficient time allowed for those interested in participating in a competition to be able to prepare and submit documents and other required information taking into account the reasonable</i>		<p>Criterion partially met</p> <p>PPL 2005 does not set out minimum time frames for particular procedures and there is</p>		Include provisions in the PPL setting out minimum time frames for submission of

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complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. The minimum time frames for submission of bids/proposals are defined for each procurement method, and these time frames are extended when international competition is solicited.	<p><i>needs of the procuring entity. Minimum time frames are, however, not defined in PPL 2005 and there is no specific provision or reference to extension of timescales when international competition is solicited. PPL 2022 addresses and resolves these issues.</i></p> <p>A.14 PPL 2005 Counting [Calculation] of Deadlines: requires that as a general principle, deadlines shall provide sufficient time for those interested in participating in a competition to be able to prepare and submit documents and other required information taking into account the reasonable needs of the procuring entity. Deadlines are calculated without breaks and where the day for submission of a bid coincides with a holiday it shall be extended to the next working day.</p> <p>A.58 PPL 2005 provides that the procuring entity must prepare a calendar covering the procurement procedure from opening of the competition to contract signature.</p> <p>A.65 PPL 2005 provides that deadlines for submission of bids shall be set according to the type of procurement procedure and within limits laid down in the rules relating to the relevant procedure.</p> <p>Minimum time frames for submission of bids/proposals are not defined in PPL 2005 and there is no reference to extension of timescales for submission of bids/proposals when international competition is solicited.⁴⁰</p> <p>PPL 2022: <i>Note: Gap in PPL 2005 addressed and resolved in PPL 2022: PPL 2022 addresses and resolves Gaps arising in PPL 2005 concerning lack of defined minimum time frames for submission of bids extension of timescales when international competition is solicited. A.75 PPL 2022 specifies minimum timeframes for submission of proposals</i></p>		no specific provision or reference to extension of timescales when international competition is solicited		bids/proposals for each procurement method, with extended time frames for international competition

⁴⁰ Confirmed in meeting between the Assessment Team and GoTL, 23/24 February 2022.

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	in Competition procedure. The timeframe is no less than 15 days and, in the case of procedures of a value in excess of USD 1,000,000 (one million US Dollars) the time frame is no less than 30 days. In the case of pre-qualification, A.84 PPL 2022 provides that there is an additional minimum timeframe of 10 days for submission of applications. A.16 PPL 2022 sets out general rules for calculation of deadlines.				
(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or on a unique Internet official site where all public procurement opportunities are posted. This should be easily accessible at no cost and should not involve other barriers (e.g., technological barriers).	<p><i>Summary: PPL 2005 provides that publication of notices in a newspaper of wide circulation is compulsory for the national open procedure and procedures using pre-qualification as well as for international open procedure where international publication is also required.</i></p> <p>Call for competition notice: A.61 PPL 2005 confirms that publication of notices is compulsory for the national open procedure, international open procedure and procedures using pre-qualification. All notices must be published in the press. Notices for the national open procedure must be published in at least one newspaper with countrywide circulation and in Portuguese or Tetum. Notices for international open procedure must be published on at least two internationally used electronic platforms in the English language or in another language of international trade, as well as a nationally circulated newspaper in Portuguese or Tetum. Notices are to be dispatched at the same time to each form of advertising medium. In practice, notices are also published on the eProcurement Portal.</p> <p>Notices may also be published on other forms of mass media as well as in electronic media in accordance with regulations and procedures applicable to e-commerce. The provisions in A.61 PPL 2005 are stated to apply, with relevant adaptations, to other forms of procurement procedure where a form of publication is required.</p>		Criterion met		

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	<p>The PPL does not mandate publication of call for competition notice on the eProcurement portal.⁴¹</p> <p>PPL 2022: A.15 PPL 2022 requires compulsory advertisement on the Procurement Portal in both official languages. Procurement procedures using [invitation to tender] must also be advertised in at least one national newspaper in both official languages. Procurement exceeding USD 1,000,000 (one million UD Dollars) must also be advertised on at least two international electronic platforms in any of the official or working languages.</p>				
<p>(d) The content published includes enough information to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one.</p>	<p><i>Summary: PPL 2005 specifies the information to be included in the call for competition notice.</i></p> <p><i>The content of the call for competition notice listed in PPL 2005 is not sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one as it does not specify that the subject matter of the contract must be described. This issue is addressed and resolved in PPL 2022, which includes in the list of the required content of advertisement/announcement [anúncio], the subject matter of the contract.</i></p> <p>Call for competition notice: A.57 PPL 2005 concerns the opening of the Open tendering [concurso público]. It</p>		<p>Criterion not met</p> <p>The content of the call for competition notice listed in PPL is not sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one as it does not specify that the subject matter of the contract must be described.</p>		<p>Include in PPL requirement to include information on subject matter of the contract in the call for competition notice.</p>

⁴¹ Confirmed in meeting between the Assessment Team and GoTL, 23/24 February 2022.

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	<p>requires the use of call for competition by means of publication of a notice which shall contain, at least, the elements listed in Appendix 5 PPL 2005.</p> <p>Appendix 5 PPL 2005 lists the information to be included in the call for competition notice: the name and address of the procuring entity, as well as the place and date of issue and the authorizing entity, unalterable declaration of the type of procurement competition, declaration that the notices shall be regarded as an announcement of the opening of the competition; and the address, days and times to obtain the competition program [<i>Programa de Concurso</i>] (A.58 PPL 2005), which has not be published with the announcement. The information listed does not refer to a description of the subject matter of the contract. However, in practice, information published on contract opportunities, in particular the standard information published on the eProcurement portal, includes a description of the subject matter of the contract.⁴²</p> <p><i>Note: Gap in PPL 2005 addressed in PPL 2022:</i> The failure in PPL 2005 to require a description of the subject matter of the contract to be included in the call for competition is addressed in PPL 2022. A.44 PPL 2022 lists the content of the advertisement/announcement [<i>anúncio</i>] to be published on the Procurement Portal. This includes the subject matter of the procurement.</p> <p>A.62 PPL Competition Documents, confirms that each competitor (bidder) shall be provided with a set of competition (procurement) documents within the deadline set in the notice. The minimum content of competition (procurement) documents is listed in Appendix 6 PPL 2005. The public service is entitled to charge the competitor for the competition (procurement) documents, limited to the cost</p>				

⁴² Confirmed in meeting between the Assessment Team and GoTL, 23/24 February 2022.

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	<p>of printing and delivery (see sub-indicators 7(a)(b) & 7(a)(d) – availability of information at no cost/publication of procurement documents).</p> <p>Where pre-qualification is used, the required content of the notice is more detailed than in a Call for Competition Notice and includes a requirement to describe the subject matter of the contract. A.50 PPL 2005 provides that where pre-qualification is used, a notice must be published in accordance with the requirements of the procedure to be used subsequently.</p> <p>The notice shall contain, at least, the elements listed in Appendix 3 PPL 2005. Appendix 3 PPL 2005 lists the information to be included in a pre-qualification notice, being (in summary): name and address of the procuring entity, place and date of issue of authorization and authorizing entity, declaration of the type of competition and that the notice is a pre-qualification notice, a description of the goods or services and requirements as to quantity and quality, date and place of delivery, procurement timetable, cost of the documents [<i>preço do impresso</i>](which shall reflect cost of printing and delivery A.51 PPL 2005) and list of pre-qualification documents and forms, language in which documents are available, place and deadline for submitting tenders, date of notification of pre-qualification results and any other useful information of information required to be provided pursuant to specific rules and procedures.</p>				

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1(d) Rules on participation

The legal framework meets the following conditions:

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(a) It establishes that participation of interested parties is fair and based on qualification and in accordance with rules on eligibility and exclusions.	<p><i>Summary: PPL 2005 lists essential qualification requirements and grounds for disqualification from a procurement procedure, underpinned by principles of legality and equality.</i></p> <p>A.4 PPL 2005 Principles of legality and equality, provide that the conditions for access and participation are the same for all interested parties and that criteria for access and participation shall be [duly expressed] throughout the procurement procedure and that any discrimination between bidders is forbidden.</p> <p>Qualification</p> <p>A.26 PPL 2005 Provides that criteria for assessing qualifications shall be based on essential and specific requirements referred to in law and in the documents related to pre-qualification and/or competition. Individuals and legal entities are required to prove qualifications required under law and any specific qualifications required in relation to the specific procurement.</p> <p>A.27 PPL 2005 lists essential qualification requirements which are, in summary:</p> <p>(a) business ability, reliability, experience and reputation, to ensure ability to deliver the contract</p> <p>(b) legal capacity to enter into a contract</p> <p>(c) compliance with legal requirements of RDTL for participation in procurement</p> <p>(d) sufficient financial resources to execute the contract</p> <p>(e) availability of suitably qualified staff to ensure fulfilment of the contract</p> <p>(f) fulfilled obligations in relation to payment of taxes and social security contributions (in the case of bidders based in Timor-Leste)</p> <p>(g) not be subject to one of the grounds for disqualification</p>		Criterion met		

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	<p>A.28 PPL 2005 provides that the procuring entity may lay down other specific qualification requirements. These must be set out in the procurement documents. Specific qualification requirements must not be discriminatory or based on other issues which are not objectively justifiable.</p> <p>Grounds for disqualification</p> <p>A.29 PPL 2005 sets out grounds for disqualification from a particular procurement procedure. Where one of the specified grounds for disqualification applies, the competitor shall be disqualified and excluded from the procurement procedure. The procuring entity shall disqualify any competitor at any time for submission of false qualification information or essential errors or omissions in qualification information.</p> <p>The grounds for disqualification are, in summary:</p> <ul style="list-style-type: none"> (a) insolvency or bankruptcy (b) cessation of [business] activity, administration (<i>curadoria</i>), winding up or liquidation (c) the business is being run by a court or judicial agent (d) business activities have been suspended by court decision (e) tax or social security debts or other debts owed to the State (f) executives or directors are convicted by a definitive [final] court decision in the preceding 5 years for criminal offenses relating to their professional behavior; or arising from provision of false statements or incorrect information about qualifications with a view to entering a contract with any public institutions in RDTL (g) disqualification as a result of administrative suspensions or licensing (h) [incompatibilities]/conflicts of interest (i) submission of more than one tender in the same competition <p>Exclusion resulting from administrative offences during the conduct of procurement</p>				

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	<p>A.5 Decree Law 12/2005 Administrative offences under the legal regime of procurement and the legal regime of public contracts, provides that any offensive conduct of a tenderer, its representative or other directly related parties may result in exclusion of the tenderer from the procedure. Administrative offences are widely defined. (See sub-indicator 1(d)(c))</p> <p>PPL 2022: A.29 PPL 2022 [<i>Impedimento</i>] lists nine grounds for exclusion from participation as candidates/tenderers in a procurement process. These concern, in summary: insolvency/liquidation type situations, default in relation to pecuniary obligations owed to the State or public entity in particular taxes and social security contributions, conviction relating to professional conduct, provision of technical advice in preparation of the procedure, conflicts of interest, certain cases of breach of contract, prohibition on participation in procurement. Offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are specifically listed as grounds for exclusion (A.29(1)(a)(d) PPL 2022).</p> <p>A.29(1)(i) provides that involvement in conduct listed in A.32(1) PPL 2022 also constitute grounds for exclusion. The conduct listed in A.32(1) PPL 2022 relates to bribery/corruption, presentation of false documents and anti-competitive practices. Where exclusion is on the grounds listed in A.32(1) PPL 2022, the person concerned must be notified of the proposal to exclude on those grounds and there is a 10-day period for the person concerned to reply. There is a right of appeal against a final decision on exclusion using the complaints and appeal process provided for in PPL 2022.</p> <p>A.31 PPL 2022, Qualification, provides that the applicant or tenderer must have qualifications required by law and must provide supporting documentation of those qualifications.</p>				

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	The[contracting authority] is entitled to request additional supporting documents at any time.				
(b) It ensures that there are no barriers to participation in the public procurement market.	<p><i>Summary: The legal framework reserves participation in competition for contracts equal to or below USD 100,000 (one hundred thousand US Dollars) to domestic participants or companies with majority domestic ownership and provides for special procedures for award of construction contracts not exceeding USD 250,000 to local companies headquartered in sub-districts. These are not excessive reservation provisions. The possibility of domestic preference price preference is provided for in the legislation but is not applied in practice. Registration requirements which were a barrier to participation for local bidders have been amended to resolve the issue.</i></p> <p>Reserved contracts: A.38 PPL 2005 National open procedure (<i>concurso público nacional</i>): Use of national open procedure is mandatory for all procedures of a value equal to or below USD 100 000 (USD one hundred thousand). The national open procedure is aimed at giving preference to individual citizens of Timor-Leste and companies set up in Timor-Leste with at least 51% share capital held by citizens of Timor-Leste. These reservation provisions are not excessive.</p> <p>Award of contracts for Construction works to local companies in accordance with District Integrated Development Planning (PDID) system procurement regime: DL 11/2013 special procurement regime for PDID, reserves the award of construction works contracts identified in PDID of a value up to USD 500,000 to companies based in the district where the project is to be implemented. This regime is subject to procedural safeguards and principles of legality, transparency and accountability. (See sub-indicator 1(l)(a))</p>		Criterion met		

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	<p>Domestic preference margin: There is reference at A.91 PPL 2005 to application of domestic price preference margins in the context of evaluation of Requests for Quotations. There are no further provisions on domestic preference and in practice domestic price preference is not applied and no detailed regulations have been issued.⁴³</p> <p>Notarial certification for proof of qualification: A.30 PPL 2005 provides that the procuring entity may require competitors to provide proof of qualification by providing suitable documentation or other information. Requirements for notarial certification are not identified as a systemic problem.⁴⁴</p> <p>Registration/certifications/licensing requirements: There are requirements for registration/certification of contractors in the construction sector by Decree Law No.27 of 2010 ("DL 27/2010")⁴⁵ and Decree Law No.26 of 2010 ("DL 26/2010")⁴⁶ and general requirements for company registration and licensing of economic activities.⁴⁷ The Assessment Team were informed that flaws were identified in registration/certification requirements for contractors in the construction sector⁴⁸ and that, as a consequence, in 2021 amendments were made to DL 27/2010 to remove this barrier to entry. The amendments scrapped limitations on participation of national companies in very high value contracts, which had previously been reserved to foreign</p>				

⁴³ Confirmed in discussions between the Assessment Team and MoF.

⁴⁴ Only one respondent in the small sample of private sector suppliers responding to the survey identified this as an issue.

⁴⁵ Decree Law No. 2 of 2010 Construction Companies and Technical Consultants Certification and Registry Regime [Registo dos Empresários em Nome Individual do Sector da Construção Civil]. Jornal da República https://mj.gov.tl/jornal/public/docs/2010/serie_1/serie1_no48.pdf

⁴⁶ Decree Law No.26 of 2010 Contractor Registry Regime [Regime Jurídico de Certificação e Inscrição de Empresas de Construção Civil e Consultoria Técnica Civil]. Jornal da República https://mj.gov.tl/jornal/public/docs/2010/serie_1/serie1_no48.pdf

⁴⁷ Law of National Parliament No. 10 of 2017 New Law on Commercial Companies [Nova Lei das Sociedades Comerciais]. Jornal da República https://mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_19_SUPLEMENTO.pdf

⁴⁸ Information received by the Assessment Team from Chamber of Commerce.

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	<p>companies, with national company participation only permitted in consortium or association with foreign companies. There have also been discussions about longer term proposals for further revision of the whole of DL 27/2010.⁴⁹</p> <p>The MoF informed the Assessment Team that some problems have been reported with the economic activities licensing regime under Decree Law No.34 of 2017 Licensing of Commercial Activities ("DL 34/2017")⁵⁰ and revision of that DL is underway to further facilitate the licensing process, but this is not identified as a systemic barrier to entry.⁵¹</p> <p>PPL 2022: A.9 PPL 2022 Principle of promoting the national economy, requires public procurement to contribute to the promotion of the national economy focusing on national goods and services where expressly permitted by PPL 2022. A.49 PPL 2022 Promoting the development of the national economy, includes provisions for reservation of contracts to tenderers or candidates who are national citizens or legal persons incorporated in Timor-Leste and more than 50% owned by nationals for: (1) procurements of less than USD 100,000 (one hundred thousand US Dollars) where reservation contributes to the development of the national economy, and; (2) procurement over USD 100,000 (one hundred thousand US Dollars) if the subject matter is classified by government resolution as strategic or subject to special protection.</p>				

⁴⁹ Information provided by Ministry of Finance in clarification process with the Assessment Team.

⁵⁰ Decree Law No.34 of 2017 Licensing of Commercial Activities [Licenciamento de Atividades Económicas]. Jornal da República https://mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_38.pdf

⁵¹ Only two respondents in the small sample of private sector suppliers responding to the survey identified company registration as an issue and referenced this only in general terms.

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<p>(c) It details the eligibility requirements and provides for exclusions for criminal or corrupt activities, and for administrative debarment under the law, subject to due process or prohibition of commercial relations.</p>	<p><i>Summary: PPL 2005 provides for exclusion for criminal or corrupt activities. Offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed in PPL 2005 as grounds for disqualification (exclusion). This issue is addressed and resolved in PPL 2022, which lists these types of offenses as grounds for exclusion. The procurement legal framework includes a regime for administrative offences and debarment (temporary or permanent ineligibility) and sets out the process to be followed, including a right of hierarchical appeal</i></p> <p>A.27 PPL 2005 lists essential qualification requirements (see sub-indicator 1(d)(a)). A.29 PPL 2005 sets out grounds for disqualification from a particular procurement procedure. This includes where executives or directors are convicted by a definitive [final] court decision in the preceding 5 years for criminal offenses relating to their professional behaviour; or arising from provision of false statements or incorrect information about qualifications with a view to entering a contract with any public institutions in RDTL. Offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed as grounds for exclusion/disqualification.</p> <p>PPL 2022: Note: Gap in PPL 2005 addressed in PPL 2022: The failure in PPL 2005 to specifically list these offenses as grounds for exclusion is addressed and resolved. A.29 PPL 2022 [<i>Impedimento</i>] lists nine grounds for exclusion from participation as candidates/tenderers in a procurement process. These grounds include convictions for offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking.</p> <p>Administrative offences and debarment of tenderers (temporary or permanent ineligibility)</p>		<p>Criterion not met</p> <p>(1) Conviction for offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed as grounds for exclusion/disqualification in PPL 2005.</p> <p>(2) The legal framework provides for a system of administrative debarment, but no information/data is available to establish whether or to what extent this regime operates in practice and there is no list of debarred suppliers published on the eProcurement Portal. Publicly available information on the operation and outcomes of the operation of a debarment regime can help to increase transparency and confidence in the procurement system as a whole.</p>		<p>(1) List conviction for offenses relating to terrorism, money laundering/terrorist financing, child labour and trafficking as grounds for exclusion/disqualification in the PPL.</p> <p>(2.1) The Government could consider increased oversight of administrative debarment process and debarment decisions as well as greater transparency to ensure that the approach adopted is consistent and proportionate. Oversight could, for example, be by way of centralised</p>

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	<p>There is a regime for public procurement and public contract related administrative offences, with a range of measures to be applied, including the possibility of temporary or permanent ineligibility (debarment). In practice, no information/data is available to establish whether or to what extent this regime operates in practice and there is no list of debarred suppliers published on the eProcurement Portal. (See also indicator 14(c)(c).</p> <p>Decisions on exclusion and ineligibility (debarment) are made by the head of the relevant public service.</p> <p>DL 12/2005 Administrative offences under the legal regime of procurement and the legal regime of public contracts, applies to all natural or legal persons who take part in procedures related to public procurement and public contracts. It defines the conduct which constitutes a relevant administrative offence, lists the measure which may be applied and by whom, and sets out the procedure for appeal against measures applied. Administrative offences are widely defined in A.3 DL 12/2005 to refer to “any action or omission” contrary to the rules established in the PPL 2005, special legal [juridical] regimes and the Public Contracts Law. This definition could be problematic if it is interpreted strictly but the Assessment Team was unable to establish how this provision is interpreted locally. Where administrative offences are allegedly committed by tenderers the measures applying and the appeal process are subject to DL 12/2005.⁵²</p> <p>Process for initial complaint against measures applied (A.9 to 14 DL 12/2005): DL 12/2005 provides that in the event a tenderer does not agree with the measures applied, he may lodge a complaint with the authority which declared the</p>				<p>monitoring of decisions by the body with responsibility for normative procurement functions. and ensuring that debarment decisions are published in practice.</p> <p>(2.2) The Government could consider preparing and publishing a user-friendly guide on the conduct of debarment proceedings to assist in ensuring that a consistent approach is adopted and that contracts subject to such proceedings are able easily to understand the process and the</p>

⁵² Where administrative offences are allegedly committed by public officials and public administration agents they are dealt with in accordance with the Statute of Public Officials [*Estatuto da Função Pública*]. A.8 Decree Law 12/2005 provides that public officials may appeal against measures applied under the terms set out in the Statute of Public Officials.

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	<p>measure. The complaint shall be writing and indicate the grounds of fact and law justifying the complaint, proof and concrete arguments. The procuring entity may decide whether lodging of the complaint or appeal shall suspend the procurement procedure or performance of the contract. The competent authority must make a decision on admissibility within five days and the competent authority must immediately notify the tenderer of the decision on the complaint, in writing.</p> <p>Process for appeal against a complaint decision – hierarchical appeal: A.15 to A.18 DL 12/2005 set out the process and time limits for submission and handling of an appeal against a decision on a complaint. A.16 DL 12/2005 list the competent authorities to settle appeals. The competent authorities are: (1) the Prime Minister, against decisions on complaints made by heads of sovereign bodies, the Ministers and Secretaries of State; and (2) heads of sovereign bodies, the Ministers and Secretaries of State, against decisions made by heads within that [body/organisation], heads of Autonomous Services or other institutions under their control. Request for appeal must be submitted within five working days of the date of notification of the complaint decision and the decision on appeal must be made within ten days of receipt of the appeal. A.18(3) DL 12/2005 provides that there is no administrative appeal against a decision of ineligibility which is ratified on appeal.</p> <p>Measures resulting from administrative offences during the conduct of procurement: A.5 DL 12/2005 provides that any offensive conduct of a tenderer, its representative of other directly related parties may result in: exclusion of the tenderer from the procedure; declaration of temporary ineligibility for of a period of up to 1 year; declaration of permanent ineligibility. A.5(3) DL 12/2005 provides that the head of the public service (<i>serviço público</i>) may declare a tenderer permanently ineligible to participate in tenders and</p>				consequences of a debarment decision.

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	<p>in public contracts in his area of competence where there is a conviction with the force of <i>res judicata</i> resulting from facts directly related to public procurement and public contracts in Timor-Leste. Where a head of a procuring entity excludes or declares any tenderer ineligible, the Procurement Service shall be notified. The eProcurement portal includes provision for publication of a list of blacklisted vendors, but it is not operational.</p> <p>Measures resulting from administrative offences after contract signature: A.6 DL 12/2005 provides that where, after the contract has been signed, there is a proven offence under the legal regime of procurement or the legal regime of public contracts which was decisive for the award of the contract, the authority which represents the procuring entity shall request the court or the competent body to declare the contract void, without prejudice to the right to seek compensation. In this case the procuring entity may also declare the surrender of the performance security.</p> <p>Criminal conduct: A.7 DL 12/2005 provides that where offensive conduct is also criminal in nature the head of the procuring entity shall request the intervention of the competent body. The procuring entity may declare the tenderer temporarily ineligible and suspend the procedure or the contract until judgment has been passed. In the event there are grounds to suspect involvement of a public official this shall be notified to the head of the procuring entity department to which the official belongs. Measures applied pursuant DL 12/2005 are independent of any results of criminal proceedings.</p> <p>In practice there is no evidence of debarment.</p> <p>PPL 2022: Eligibility and exclusion: A.29 PPL 2022 [<i>Impedimento</i>] lists nine grounds for exclusion from participation as candidates/tenderers in a procurement process. These include convictions relating to professional conduct and also offenses relating to terrorism, money</p>				

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	<p>laundering/terrorist financing, child labor and trafficking, thus remedying the Gap identified in relation to PPL 2005. A.29(1)(i) provides that involvement in conduct listed in A.32(1) PPL 2022 (bribery/corruption, presentation of false documents and anti-competitive practices) also constitute grounds for exclusion, subject to due process and right of appeal.</p> <p>Administrative debarment: A.184 to 191 PPL 2022 sets out the sanctions regime, including fines and administrative debarment. The National Procurement Commission (CNA) is responsible for conduct of proceedings under the sanctions regime and applying fines and ancillary penalties, including administrative debarment. Decision on the application of an ancillary penalty must be published on the Procurement Portal for the duration of the period of prohibition.</p>				
<p>(d) It establishes rules for the participation of state-owned enterprises that promote fair competition.</p>	<p><i>Summary: There are no provisions in PPL 2005 or other public procurement related Decree Laws establishing rules for participation of state-owned enterprises. There are provisions in the standard bidding documents for works which promote fair competition, but these are sample documents rather than templates and their use is not mandatory. PPL 2022 does not address or resolve this issue.</i></p> <p>There are no provisions in the PPL or other public procurement related Decree Laws establishing rules for participation of state-owned enterprises ("SOEs"). Standard Procurement Documents (based on international financing institution standard documents in 2010/2011) include provisions concerning Government-owned enterprises. For example, Standard Procurement Document for Medium Works provides at Section 1 Instruction to Bidders, para. 3.4 Eligible Bidders "Government-owned enterprises in the Democratic Republic of Timor-Leste may only participate if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the</p>		<p>Criterion not met</p> <p>There are no provisions in PPL 2005 or other public procurement related decree laws establishing rules for participation of state-owned enterprises which promote fair competition and create a level playing field for all competitors.</p>		<p>Include provisions in procurement legislation establishing rules for participation of state-owned enterprises that promote fair competition and ensure a level playing field for all competitors</p>

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	<p>Employer”.⁵³ The Standard Procurement Documents are, in practice, sample documents rather than templates and their use is not mandatory (See sub-indicator 2(b)).</p> <p>PPL 2022: There are no provisions in PPL 2022 establishing rules for participation of SOEs as bidders.</p>				
(e) It details the procedures that can be used to determine a bidder's eligibility and ability to perform a specific contract.	<p><i>Summary: the legal framework details the procedures to be used to determine the bidders' eligibility and ability to perform a specific contract. For specific types of more complex procurement and higher value contracts the legal framework requires the use of pre-qualification ensuring the only eligible and qualified participants are included in the tender process. Circumstances where competitive negotiation or two stage procurement may be used are defined in the legal framework.</i></p> <p>A.49 PPL 2005 provides that a pre-qualification stage is mandatory for specified types of procurement: procurement relating to specially designed equipment; industry facilities; specialized services; turnkey contracts; design & build and management contracts; and contract over USD 250 000 (USD two hundred and fifty thousand); and in other cases, provided for by law. A.48 PPL 2005 provides that, unless otherwise stipulated by law, the authority competent to launch the open procedures is also competent to decide whether pre-qualification will be used.</p> <p>In addition to national and international Open procedures (which may include pre-qualification) the legal framework</p>		Criterion met		

⁵³ Extract from pp.16-18 State-owned enterprises in Timor-Leste. *Pacific Economic Monitor*, ADB, Manila, December 2017: Both BNCTL [National Bank] and Timor Gap [national oil company] [are] “also competing directly with privately owned businesses. Timor Gap’s decision to enter the petroleum retailing sector has placed the business in competition with local entrepreneurs, while for BNCTL, Timor-Leste’s financial sector is becoming increasingly competitive as new banks enter the market and microfinance institutions expand their operations. Competition can help make markets more efficient. However, government support to SOEs can undermine competition within the market and crowd out private investments, thus undermining long-term efficiency.” <https://www.adb.org/sites/default/files/publication/384676/pem-december-2017.pdf>

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	<p>permits use of [Competitive] Negotiation or proposals in two stages (<i>negociação ou de propostas em duas etapas</i>) in exceptional cases for the procurement of goods, complex works and services.</p> <p>A.80 PPL 2005 Sets out the competences of the [competition jury] which include (a) admission or exclusion of competitors based on the requirement of the pre-qualification documents or competition documents; and (b) deciding on the pre-qualification of competitors, based on the requirements in the pre-qualification documents. A.82 PPL 2005 provides that the decision on admission or exclusion and qualification of competitors is conducted in a private meeting of the competition jury. The decision shall be made applying the criteria set out in the pre-qualification or competition documents. A.85 PPL provides that the assessment of pre-qualification must be based on requirements set out in the pre-qualification documents and the final list recorded in writing, with reasons. A.29 PPL 2005 provides that competitors shall be informed of grounds for disqualification and impediments in the pre-qualification or tender documents.</p> <p>A.30 PPL 2005 provides that the procuring entity may require competitors to provide proof of qualification by providing suitable documentation or other information. It also confirms that requests for proof of qualification may include requirements for documents which are subject to notarial certification or official confirmation.</p> <p>A.49 PPL 2005 provides that a pre-qualification stage is mandatory for specified types of procurement: procurement relating to specially designed equipment; industry facilities; specialized services; turnkey contracts; design & build and management contracts; and contract over USD 250 000 (USD two hundred and fifty thousand); and in other cases, provided for by law. A.48 PPL 2005 provides that, unless otherwise stipulated by law, the authority competent to</p>				

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	<p>launch the open procedures is also competent to decide whether pre-qualification will be used.</p> <p>PPL 2022: A.29 PPL 2022 [<i>Impedimento</i>] lists the grounds for exclusion from participation as candidates/tenderers in a procurement process and provides for candidates or tenderers to submit self-declarations under oath that grounds for exclusion do not apply. A.31 PPL 2022 Qualification, provides that the applicant or tenderer must have qualifications required by law and must provide supporting documentation of those qualifications</p> <p>A.34 PPL 2022 permits use of a pre-qualification phase where technical or financial complexity justifies its use</p> <p>A.24 PPL 2022 provides that the National Procurement Commission (CNA) is responsible for creating and maintaining databases of interested parties, candidates, tenderers and private contractors.</p>				

1(e) Procurement documentation and specifications

The legal framework meets the following conditions:

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(a) It establishes the minimum content of the procurement documents and requires that content is relevant and sufficient for suppliers to respond to the requirement.	<p><i>Summary: PPL 2005 lists the minimum content of competition [procurement] documents which is relevant and sufficient for suppliers to respond to the requirement.</i></p> <p>A.62 PPL 2005 requires that in competitive procedures the procuring entity provides each competitor with a set of competition [procurement] documents.</p> <p>The minimum content requirements for competition [procurement] documents are set out in Appendix 6 PPL</p>		Criterion met		

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	<p>2005. They include instructions for preparing and submitting bids; features of the goods and services which are the subject of the procurement, with minimum information specified including specifications, quality requirements, terms and conditions, contract delivery dates, qualification requirements, methods for assessing bidder qualification, bid security, contract performance security, power of attorney, subcontracting information. This is reflected in the Standard Procurement/Bidding Documents.</p> <p>A.62 PPL On Competition Documents, confirms that each competitor (bidder) shall be provided with a set of competition (procurement) documents within the deadline set in the notice. The minimum content of competition (procurement) documents is listed in Appendix 6 PPL. The public service is entitled to charge the competitor for the competition (procurement) documents, limited to the cost of printing and delivery.</p> <p>Where a pre-qualification stage is used, A.51 provides that the minimum content of pre-qualification documents is as set out in Appendix 4 PPL 2005. These are, in summary: instructions for preparing and submitting pre-qualification requests; summary of general terms and conditions; list of documentary evidence and other information which competitors must submit – both general qualification requirements and specific qualification requirements.</p> <p>PPL 2022: A.45 PPL 2022 lists, by reference to A.44(2), the content of the invitation issued to tenderers, including information on the contract, object of the competition, value of the procurement procedure, special contract conditions, place and terms of performance.</p>				
(b) It requires the use of neutral specifications,	<i>Summary: PPL 2005 does not specifically refer to the use of neutral specifications and citation of international norms or</i>		Criterion not met.		Include provisions in the PPL

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citing international norms when possible, and provides for the use of functional specifications where appropriate.	<p><i>for use of functional specifications where appropriate. These requirements are referred to in some of the standard bidding/procurement documents and the Best Practice Guide on Tender Specification writing. PPL 2022 contains a general prohibition on references to a particular manufacture or provenance, to a specific procedure that characterizes the products or services, or specific trademarks, patents, type, origins or production methods and includes provisions on equivalence, although it does not use the terminology “neutral” specification or “functional” specifications.</i></p> <p>A.62 PPL 2005 requires that in competitive procedures the procuring entity provides each competitor with a set of competition [procurement] documents. The minimum content requirements for competition [procurement] documents are set out in Appendix 6 PPL 2005.</p> <p>Appendix 6 PPL 2005 includes references to design specifications and descriptive models but also refers specifically to inclusion of information on “Brands of other signs and symbols”</p> <p>Standard bidding /procurement documents (SBD) Goods and Services ITB Section 2, General Specification Requirements provides at</p> <p>f.) “where possible and appropriate, goods and materials shall be offered in accordance with recognized international or national quality standards & codes of practice.”</p> <p>h.) “the supplier shall also include with its Quotation a concise technical narrative concerning the compliance of goods & related services offered with the Technical Specifications. All variations and differences should be briefly explained, with the purpose of demonstrating that functionally and performance – wise the specification offered is equivalent to or better than the specification requested”</p>		Recognition of equivalent standards: PPL 2005 does not contain provisions requiring recognition of standards that are equivalent, when neutral specifications are not available. This is an important requirement to enable suppliers to understand clearly what is requested of them and to avoid [artificially narrowing competition]		requiring recognition of standards that are equivalent, when neutral specifications are not available and ensure that these provisions flow through consistently into the Guidelines and Standard Procurement Documents.

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	<p>Best Practice Guide 2: Tender Specification Writing (p.4), What makes a good specification? Confirms the importance of a functional approach, stating that the “specifications should emphasize what the product is meant to do rather than emphasize the technical requirements” and “Where possible, specifications should be written in terms of what the goods, service, work is meant to achieve (the outputs or functions to be fulfilled) rather than listing specific technical requirements.”</p> <p>PPL 2022: Note: Gap in PPL 2005 for the most part addressed in PPL 2022:</p> <p>A.47 PPL 2022 Specifications contains a general prohibition on references to a particular manufacture or provenance, to a specific procedure that characterizes the products or services, or specific trademarks, patents, type, origins or production methods. Such references may only be made in exceptional circumstances, in which case they must refer to equivalents, by use of the words “or equivalent”</p> <p>A.62 PPL 2022 Assessment requires that factors and sub-factors for assessing proposals must consider the possible benefits such as use of international standards.</p>				
(c) It requires recognition of standards that are equivalent, when neutral specifications are not available.	<p><i>Summary: PPL 2005 does not contain provisions concerning recognition of standards or equivalence. The standard bidding documents and best practice guide refer to the principle of recognition of equivalent standards. This issue is addressed in PPL 2022, which includes equivalence provisions.</i></p> <p>Standard Procurement Documents, Goods and Services ITB Section 2, General Specification Requirements provides at f.) “where possible and appropriate, goods and materials shall be offered in accordance with recognized international or national quality standards & codes of practice.”</p>		<p>Criterion partially met</p> <p>PPL 2005 does not contain provisions requiring recognition of standards that are equivalent, when neutral specifications are not available. This is an important requirement to enable suppliers to understand clearly what is requested of them and to avoid artificially narrowing competition.</p>		<p>Include provisions in the PPL requiring recognition of standards that are equivalent, when neutral specifications are not available and ensure that these provisions flow through consistently into</p>

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	<p>h.) "the supplier shall also include with its Quotation a concise technical narrative concerning the compliance of goods & related services offered with the Technical Specifications. All variations and differences should be briefly explained, with the purpose of demonstrating that functionally and performance – wise the specification offered is equivalent to or better than the specification requested"</p> <p>Best Practice Guide 2: Tender Specification Writing (p.4), What makes a good specification? States that a "brand name should not be used in a specification. If it has to be, it should be followed by the words, "or equivalent"."</p> <p>PPL 2022: A.47 PPL 2022 sets out equivalence provisions.</p>				the Guidelines and Standard Procurement Documents.
(d) Potential bidders are allowed to request a clarification of the procurement document, and the procuring entity is required to respond in a timely fashion and communicate the clarification to all potential bidders (in writing)	<p><i>Summary: PPL 2005 allows potential bidders to request clarification of the procurement documents in a preliminary conference with appropriate provisions for response and communication.</i></p> <p>A.63 PPL 2005 provides for a preliminary conference to be held by the procuring entity in order to clarify all details regarding the procurement procedure under way. The preliminary conference is open in nature and may involve a site visit. When, as a result of the conference, it is necessary to amend or alter any of the competition terms, such changes shall be notified in writing to all competitors.</p> <p>PPL 2022: A.48 PPL 2022 Clarification and rectification [of parts] provides interested parties with the right to request clarification necessary for proper understanding and interpretation of the procurement procedure and requires the contracting authority to hold a prior conference for clarifications and possible rectifications. Timescales for responses are specified and the deadline for submission of tenders shall be extended in specified cases. Rectifications</p>		Criterion met		

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	by the contracting authority must be advertised using the same means as the [original advertisement].				

1(f) Evaluation and award criteria

The legal framework mandates that:

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(a) The evaluation criteria are objective, relevant to the subject matter of the contract, and precisely specified in advance in the procurement documents, so that the award decision is made solely on the basis of the criteria stipulated in the documents.	<p><i>Summary: PPL 2005 mandates that evaluation criteria are pre-disclosed and objective and are specified in advance in the procurement documents. Evaluation and the award decision is made solely on the basis of criteria stipulated in the document.</i></p> <p>A.86 PPL 2005 Evaluation and choice in tendering procedures, sets out principles, processes and methodology for evaluation including listing essential criteria and commercial analysis required. It covers financial analysis and includes the principle of evaluation of total (lifetime) cost.</p> <p>A.86(1) & (2) provide that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria. Use of cost/benefit approach, taking into account life-cycle costs is provided for.</p> <p>A.86(3) PPL 2005 lists the essential criteria to be taken into consideration in analysis of proposals based on cost/benefit which are, in summary; technical and professional analysis, meeting essential and desirable requisites, client service including support and maintenance, quality guarantee, execution capacity, prior experience and performance, local and financial capacity.</p> <p>A.86(4) PPL 2005 concerns commercial analysis of the reliability of the bidder and capacity of reducing State risk, taking into account listed factors which are, in summary;</p>		Criterion met		

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	<p>nationality (requirement to be of East Timorese nationality or association with Timorese and professional credibility and reputation); financial capacity; risk management including insurance and use of authorized sub-contractors; contract conformity; conflicts of interest; historic record of commercial relationships with the State.</p> <p>A.86(5) PPL 2005 requires local development and industry to be included in the tender announcement and evaluated. Proposals must be evaluated and classified according to their impact on local development and industry, by reference to a list of factors including local job creation, transfer of capacity and technology and support to medium and small businesses. A.86(6) confirms that financial analysis and includes the principle of evaluation of total (lifetime) cost covering both capital costs and operational costs. There are provisions concerning development of criteria in the context of procurement of services and for two envelope processes. PPL 2005 A.91 provides those final proposals in response to request for quotations must be evaluated and compared by the procuring entity and the following general rules should be applied: (a) award to the proposal with the lowest price subject to any margin of preference applied to national competitors or for the benefit of proposals that involve local projects. In practice, there are no domestic price preference provisions. (b) proposal with best quality/price ratio subject to conditions applying to bidders concerning debts due to the State, payment of taxes and demonstration of specialization in the activity concerned.</p> <p>The general rules and specification must be included in the procurement documents and specific evaluation criteria must be set out in the invitation to tender. A.80 PPL 2005 requires the competition jury which evaluates bids to assess bids according to the criteria laid down in the competition (procurement) documents. Standard Procurement Documents confirm that bids will be evaluated in accordance with criteria set out in those documents.</p>				

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	<p>PPL 2022: A.64 PPL 2022 Award criterion, list three award criteria: best value for money, lowest price and best technical quality and provides that, as a general rule, the award criterion shall be best value for money, combining consideration of the tenderer's capacity, subject matter of the contract and price. Evaluation must be made using the pre-published award criteria and evaluation model.</p>				
<p>(b) The use of price and non-price attributes and/or the consideration of life cycle cost is permitted as appropriate to ensure objective and value-for-money decisions.</p>	<p><i>Summary: PPL 2005 confirms that, the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio, where the purchase price is only one of the criteria. Analysis of life-cycle costing is required as standard.</i></p> <p>A.86(1) PPL 2005 provides that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria.</p> <p>A.86(2) PPL 2005 requires evaluation to take into account cost/benefit analysis on a life-cycle basis.</p> <p>A.86(6) PPL 2005 requires financial analysis for the entire life cycle of the subject matter of the procurement and refers specifically to avoiding cheaper produces or services with inferior quality that might cost more in the long term due to maintenance costs.</p> <p>See also, sub-indicator 3(b) Sustainable Public Procurement.</p> <p>PPL 2022: A.62 & A.63 PPL 2022 Evaluation, sets out the principle of evaluation based on published award criteria, evaluation methodology and valuation matrix, enabling the scoring and ranking of tenderers, taking into account lifetime (lifecycle) costs and factors/sub- factors such as quality/technical value, staff, post sales service and environmental or social sustainability in contract performance.</p>		<p>Criterion met</p>		

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(c) Quality is a major consideration in evaluating proposals for consulting services, and clear procedures and methodologies for assessment of technical capacity are defined.	<p><i>Summary: Consulting (consultancy) services are not subject to a separate set of legal provisions. General provisions of PPL 2003 providing that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria. Two envelope assessments can be used, with technical proposals/quality considered first, followed by financial assessment.</i></p> <p>A.86(1) PPL 2005 provides that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria.</p> <p>A.86(2) PPL 2005 requires evaluation to take into account cost/benefit analysis on a life-cycle basis and not only at the moment of purchase.</p> <p>There are provisions in A.86 concerning technical and professional analysis, including prior experience and performance and client service.</p> <p>A.86(9) provides for use of a two envelope procedure, with Envelope One containing information in response to requirements concerning: technical & professional, commercial, industrial and local involvement. Envelope Two contains the bid price. A.86(10) provides that the information Envelope One must be evaluated first to ensure priority is given to value issues rather than price. Envelope Two is opened after evaluation of the responses in Envelope One. Envelope Two from the top two ranked bidders are opened and evaluated. The successful bidder will be the bidder who meets the criteria in Envelope One and best price [<i>preço sublinhado</i>]</p>		<p>Criterion met</p> <p>Area for improvement: Quality in evaluation of consulting services. There is no guidance regarding the evaluation method for consultancy services.</p>		<p>Consider publishing specific guidance on available methods for evaluation of proposals for consulting services and how to apply those evaluation methods in practice.⁵⁴</p>

⁵⁴ See, for example, Use of Merit Point Criteria for Bid Evaluation, Guidance Note on Procurement 2021, Asian Development Bank. <https://www.adb.org/documents/merit-point-criteria-bid-evaluation>

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	<p>Standard Procurement Document Request for Proposals for Consulting Services, Section 1 Instructions to Consultants, sets out the process for evaluation and requires a two-stage evaluation: (1) evaluation of technical proposals; followed by (2) public opening and evaluation of financial proposals</p> <p>PPL 2022: PPL 2022 does not contain separate provisions for the procurement of consulting services. They are subject to the same general principle of evaluation on the basis of best value of money, including consideration of qualitative issues including qualifications and experience of staff.</p>				
<p>(d) The way evaluation criteria are combined, and their relative weight determined should be clearly defined in the procurement documents.</p>	<p><i>Summary: PPL 2005 requires allocation or numeric scales [points allocation] to evaluation criteria and disclosure of evaluation criteria in the invitations to tender. It is not clear from PPL 2005 whether points/weightings must be disclosed in procurement documents but the Best Practice Guidance states that it is not mandatory to make the importance score (or weightings) of the evaluation known in the procurement documents. PPL 2022 resolves this issue.</i></p> <p>A.7(1) PPL 2005 Principles of transparency and publicity, provides that award criteria shall be defined prior to the procedure and information on award criteria provided to [those interested from the start of the procurement procedure.</p> <p>A.86(8) PPL 2005 Evaluation: allocation of score: A.86(8) requires the development of criteria based on the principles of A.86 as appropriate for the particular tendering procedure, with numeric scales [points allocation] for evaluation criteria. Financial analysis shall not have a numeric scale [points allocation]. Evaluation criteria must be included in the invitations to tender but there is not requirement that procurement documents state the relative weights allocated to the criteria.</p> <p>Standard Procurement Document for Medium Works confirms at s.27, Instructions to Bidders that numerical scores</p>		<p>Criterion partially met</p> <p>PPL 2005 does not require that procurement documents state the relative weights allocated to the criteria and the Best Practice Guide states that disclosure of the importance score (or weightings) is not mandatory.</p>		<p>Include provisions in the procurement legislation requiring publication of weightings (if used) in the procurement documents.</p>

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	<p>or points are to attribute to non-financial evaluation criteria but does not specify whether those are disclosed in the Standard Bidding/Procurement Document.</p> <p>Procurement Best Practice Guide 2: Tender Process and Tender Documents, states that “It is not mandatory to make the importance score (or weightings) of the evaluation criteria known in an EOI or RFT (RFP or ITB). However, if they are made known, they need to be adhered to, or changed in a way that is made know to bidders....”</p> <p>PPL 2022: Note: Gap in PPL 2005 addressed in PPL 2022. A.62 PPL 2022 Evaluation sets out details of evaluation using an evaluation matrix with published scoring methodology, weightings and tiebreak provisions.</p>				
<p>(e) During the period of the evaluation, information on the examination, clarification and evaluation of bids/proposals is not disclosed to participants or to others not officially involved in the evaluation process.</p>	<p><i>Summary: the legal framework includes a general principle of confidentiality and specifically requires documents and information data submitted by participants to be treated confidentially including during the period of evaluation.</i></p> <p>A.5 PPL 2005 lists the principle of confidentiality as one of the underlying principles.</p> <p>A.5(3) PPL 2005 provides that the procuring entity, its employees and agents shall preserve the confidentiality of documents and information data submitted by competitors.</p> <p>PPL 2022: A.26 PPL 2020 Conduct of public subjects, requires the contracting authority, its employees, representative and members of the competition jury to keep confidential all information they become aware of in the course of their duties</p>		<p>Criterion met</p>		

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1(g) Submission, receipt, and opening of tenders

The legal framework provides for the following provisions:

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(a) Opening of tenders in a defined and regulated proceeding, immediately following the closing date for bid submission.	<p><i>Summary: PPL 2005 provides for opening of tenders at a public opening ceremony, on dates set in the tender documents and sets out the procedures to be followed and records to be made. PPL 2005 does not state/require that the opening of tenders takes place immediately following the closing date for bid submission. PPL 2022 does not resolve this issue.</i></p> <p>A.78 PPL 2005 Public ceremony for opening of [bid] envelopes A.78(1) PPL 2005 requires a public ceremony for the opening of bid envelopes by the bid opening committee. The bid opening ceremony shall be held on the dates set in the pre-qualification or tender documents. A.78(2) PPL 2005 provides that the public opening ceremony may be attended by any interested person, but they shall not be allowed to speak. A.78(4) &(5) PPL 2005 set out the procedures to be followed and records to be made in the opening ceremony for pre-qualification procedures and open procedures.</p> <p>PPL 2022: PPL 2022 does not establish the public opening of a bid and does not have a bid opening commission, with the jury being responsible for opening proposals. A.76 PPL 2022 Submission of proposals requires the competition jury to publish, within three days of the deadline for submission of tenders, a list of tenderers who submitted tenders within the deadline.</p>		<p>Criterion not met</p> <p>PPL 2005 does not state that the opening of tenders takes place immediately following the closing date for bid submission. Opening immediately after the deadline for submission of tenders reduces the possibility of loss or alteration of proposals or submissions. The legal framework would benefit from greater clarity on this point.</p>		<p>Include provisions in the procurement legislation requiring tenders to be opened immediately following the date for submission, save in specified circumstances. Include relevant provisions to allow for future roll out of e-procurement</p>
(b) Records of proceedings for bid openings are retained and available for review.	<p><i>Summary: Records of bid proceeding must be retained and Decree Law No.43 of 2016 concerning Access to Official Documents provides for a right of access by the public.</i></p> <p>A.78(4) &(5) PPL 2005 set out the procedures to be followed and records to be made in the opening ceremony for procedures with pre-qualification and the open procedures.</p>		<p>Criterion met</p>		

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	<p>A.78(5) PPL 2005 provides that the documents from the opening ceremony shall be delivered direct to the jury or kept in a safe place until delivered to the jury at the latest on the day following the opening ceremony. In the context of Infrastructure Fund funded projects, the Infrastructure Fund Administration Manual, November 2020 ("IF Manual") refers at s.9.5, p.23 to CAFI/SGP document retention policies. Public availability of records of proceedings for bid openings are governed by Decree Law No.43 of 2016 concerning access to official documents ("DL 43/2016")⁵⁵. DL 43/2016 provides a general right of access by the public to official documents in accordance with general principles of transparency, equality, impartiality and protection of personal data, subject to specified safeguards and exclusions. This Decree Law applies to bodies and services of the direct and indirect administration of the State, municipalities, public companies and other entities in the exercise of administrative functions of authorities/public authorities. The definition of "official documents" includes memoranda, minutes, reports and contracts. Records are available for audit purposes, although the Assessment Team understands that, in practice, there is a problem with lack of completeness of records for audit purposes.⁵⁶</p> <p>PPL 2022: A.19 PPL 2022 requires the procuring authority to record all communications, acts and other documents relating to the procurement process and contracting in a single organized record (archive) and includes provisions on retention and availability for review of the procurement file</p>				

⁵⁵ Decree Law No.43 of 2016 Rules Relating to Access to Official Documents [Regras Relativas ao Acesso a Documentos Oficiais]. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_40a.pdf

⁵⁶ Information provided in Audit reports.

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(c) Security and confidentiality of bids is maintained prior to bid opening and until after the award of contracts.	<p>A.5 PPL 2005 lists the principle of confidentiality as one of the underlying principles of public procurement. A.5(3) PPL 2005 provides that the procuring entity, its employees and agents shall preserve the confidentiality of documents and information data submitted by competitors.</p> <p>PPL 2022: A.26 PPL 2020 Conduct of public subjects requires the contracting authority, its employees, representative and members of the competition jury to keep confidential all information they become aware of in the course of their duties.</p>		Criterion met		
(d) The disclosure of specific sensitive information is prohibited, as regulated in the legal framework.	<p><i>Summary: Confidentiality is one of the underlying principles listed in PPL 2005 and there is acknowledgement, in the context of qualification, of the need to have regard to protection of intellectual property and trade secrets. There is no general provision in PPL 2005 prohibiting or regulating disclosure of specific sensitive information. PPL 2022 addresses and resolves this issue with specific provisions on confidential information.</i></p> <p>A.5 PPL 2005 lists the principle of confidentiality as one of the underlying principles. A.5(3) PPL 2005 provides that the procuring entity, its employees and agents shall preserve the confidentiality of documents and information data submitted by competitors. The need to have regard to protection of commercially sensitive information (intellectual property and trade secrets) is acknowledged in A.27(2) PPL in the context of proof of qualification. There are no other specific provisions concerning the disclosure/non-disclosure of specific sensitive information in the procurement legal framework.</p> <p>DL 43/2016 concerning access to official documents provides a general right of access by the public to official documents in accordance with general principles of transparency, equality, impartiality and protection of personal data, subject to specified safeguards and exclusions. Access to official</p>		<p>Criterion partially met</p> <p>PPL 2005 does not include provisions protecting specific sensitive information including reference to protection of trade secrets and proprietary information, or protection of privacy and acknowledging the need to avoid disclosure of information that can be used to distort competition</p>		<p>Include provisions in the PPL to address protection of trade secrets and proprietary information, protection of privacy.</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p>documents may be restricted on a number of grounds. According to A.8(6) DL 43/2016, third parties may only have access to documents containing commercial, industrial or internal business secrets if they have written authorization from the company or demonstrate direct interest in accordance with the principle of proportionality.</p> <p>PPL 2022: Note: Gap in PPL 2005 addressed in PPL 2022. A.6 PPL 2022 Principles of transparency and publicity, addresses and resolves this issue, requiring confidentiality to be maintained in respect of documents and information classified as confidential by private subjects, which are covered by IP rights or trade secrets or that are subject to any other secrecy regime.</p>				
(e) The modality of submitting tenders and receipt by the government is well defined, to avoid unnecessary rejection of tenders.	<p><i>Summary: The modality of submission and receipt of tenders is defined in PPL 2005.</i></p> <p>A.71 PPL 2005 requires the procuring entity to declare and document the tender submission period closed. Any bid which is received after the deadline is returned unopened to the competitor.</p> <p>PPL 2022: A.57 PPL 2022 Submission of the proposal requires the proposal documents to be submitted through the Procurement Portal, with receipt of tenders recorded, noting the date and time of arrival, order number of presentation and providing confirmation of receipt.</p>		Criterion met		

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1(h) Right to challenge and appeal

The legal framework provides for the following:

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(a) Participants in procurement proceedings have the right to challenge decisions or actions taken by the procuring entity.	<p><i>Summary: PPL 2005 provides for participants in procurement proceedings to have the right to challenge decisions or actions taken by the public service (procuring entity).</i></p> <p><i>Note: The right of challenge is referred to in this sub-indicator and indicator 13 as “complaint” (reclamação).</i></p> <p>A.96 to 100 PPL 2005 set out provisions concerning the right of competitors to submit a complaint.</p> <p>A.96 PPL 2005 provides that competitors that consider themselves to have been affected during the course of the procurement procedure have the right to submit a complaint to the public service [procuring entity] on three specified grounds (“grounds for complaint”) (see sub-indicator 1(h)(c)). The examination and decision on a complaint is made by the “competent entity”. A.97 PPL 2005 confirms that where the term “competent entity” is used in this context, it refers to entities authorised to launch the procurement procedures for which they are in charge.</p> <p>PPL 2022: PPL 2022 A.174 provides for a right to challenge and hierarchical appeal in respect of all acts, omissions and documents concerning procurement and procurement procedures, with the right to challenge being lodged with the contracting authority.</p>		Criterion met		
(b) Provisions make it possible to respond to a challenge with administrative review by another body, independent of the procuring entity that has the authority to suspend the award	<p><i>Summary: PPL 2005 provides participants in procurement proceedings with the right to respond to a decision on a complaint (reclamação) by means of hierarchical appeal. There is no specialist independent administrative appeal/review entity. The bodies competent to consider an hierarchical appeal cannot be guaranteed independent of the procuring entity and the process of hierarchical appeal is not a public process. PPL 2022 retains a system of hierarchical appeal and the possibility of lack of independence identified</i></p>		<p>Criterion not met</p> <p>(1) System of hierarchical appeal The bodies competent to consider an appeal against a decision on hierarchical appeal are not guaranteed sufficiently independent of the procuring entity (public service). There is the</p>	yes	<p>(1) Critical study of current system of hierarchical appeal plus short term/interim measures:</p> <p>(i) Consider undertaking a critical study of</p>

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decision and grant remedies, and also establish the right for judicial review.	<p><i>under PPL 2005. Award decisions are suspended pending a definitive decision on hierarchical appeal. Remedies are not specified in PPL 2005, but PPL 2022 resolves this issue by listing the available remedies in the context of hierarchical appeal</i></p> <p><i>A decision on hierarchical appeal is subject to a general right of judicial review in respect of decisions made by an administrative body, although this route is not referred to in PPL 2005. PPL 2022 specifically provides for the right of judicial appeal (judicial review) including in respect of decisions made in hierarchical appeals.</i></p> <p>A.100 to A.103 PPL 2005 Right of hierarchical appeal</p> <p>A.101 PPL 2005 provides a right of hierarchical appeal. Competitors not satisfied with the decision on complaint made by the entity authorized to launch the procurement procedure may lodge a hierarchical appeal addressed to the competent authority for appeal. The process of hierarchical appeal is not a public process.⁵⁷</p> <p>A.102 PPL 2005 specifies the entities competent to decide the hierarchical appeal, being “leaders of State organs of power, ministers and secretaries of State...” are competent to decide hierarchical appeals against decisions of:</p> <p>(a) officers expressly appointed and authorized to carry out procurement procedures</p> <p>(b) heads of autonomous services, public entities and other bodies with administrative and financial autonomy</p> <p>(c) other legal entities in which the State has a higher than 50% (fifty per cent) capital participation which, although not of a business nature, mainly pursue public purposes</p> <p>A.102(2) PPL 2005 provides that the Prime Minister is the entity competent to examine and decide hierarchical appeals concerning procurement which are lodged against decisions</p>		<p>possibility that the competent entities for appeal may have been involved, or have the potential to be involved, in some capacity in the procurement transaction or process leading to contract award decisions which is the subject of complaint.</p> <p>(2) Remedies: PPL does not specify the remedies which may be granted by the competent entity in a hierarchical appeal.</p> <p>(3) Judicial review: There is no specific provision in the PPL establishing a right for judicial review of a decision made in a hierarchical appeal</p> <p><i>This gap is allocated a red flag because the use of a system of hierarchical appeal is not limited to the procurement context, being applicable in appeals against other types of administrative decisions. Review and possible changes are thus likely to require a wider discussion and engagement with government stakeholders in particular and may not be</i></p>		<p>the data and information available and stakeholders’ views on the operation of the system of hierarchical appeal to assess the level of independence of decision making, and confidence in and effectiveness of the operation of the system in practice. This may include measures linked to the development of e-GP system and use of a complaints review module.</p> <p>(ii) Consider also requiring publication of applications for hierarchical appeal and decisions on hierarchical</p>

⁵⁷ MoF confirmed in discussions with the Assessment Team that hierarchical appeal (which is not a process limited to public procurement issues) is not, according to the legal system of Timor-Leste, a public process.

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	<p>made by leaders of State organs of power, ministers and secretaries of State.</p> <p>PPL 2005 does not specify the remedies which may be granted by the competent entity in a hierarchical appeal.</p> <p>PPL 2022: <i>Note: Gap in PPL 2005 addressed and resolved in PPL 2022:</i> A.177 PPL 2022 refers to the remedies which may be granted by the competent entity in a hierarchical appeal.</p> <p>There is no specific provision in the PPL establishing a right for judicial review of a decision made in an hierarchical appeal. Any decision made by an administrative body, including a decision on hierarchical appeal, is however, subject to the general right of judicial review, according to Section 137(3) of the Constitution and A.9 of DL 32/2008, Law on Administrative Procedure. (See sub-indicator 1(h)(f)).⁵⁸</p> <p>PPL 2022: <i>Note: Gap in PPL 2005 addressed and resolved in PPL 2022:</i> A A.178 PPL 2022 establishes the right for judicial review of decisions issued in the context of administrative (hierarchical) appeals.</p> <p>PPL 2022: Hierarchical appeal: A.177 PPL 2022 retains a system of hierarchical appeal against a decision on complaint to the highest superior of the author of the act and sets out time scales for submission of and decision on hierarchical appeal.</p>		<i>solely within the purview of the Ministry of Finance.</i>		<p>appeal to enhance transparency and confidence in the system.</p> <p>(iii) Consider and put into place interim measures such as user-friendly guidance, pending outcome of the critical study to ensure greater clarity as to the process to be followed and issues taken into consideration by decision makers in hierarchical appeal and to enhance the independence of decision makers in hierarchical appeal.</p> <p>(iv) It is highly recommended to also consider, as part of the critical study on</p>

⁵⁸ The general right to apply for judicial review means that it is also possible to lodge an application for judicial review against a procurement related decision of a procuring entity, but no data was identified or provided to further assess the use of this measure in practice. PPL 2005 does not refer to this right to judicial review, but it does provide specifically, and in some detail, for use of hierarchical appeal of a decision by a procuring entity in response to a decision on complaint (challenge) which is why the analysis in this indicator is focussed on hierarchical review.

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					<p>hierarchical appeal, or in a separate exercise, whether alternative models for review/appeal of decisions on complaint, such as creation of a specialist independent review function or body, may improve the independence, transparency and effectiveness of the review/appeal process and public procurement system as a whole</p> <p>(2) Remedies: Include in PPL a list of the remedies which may be granted on hierarchical appeal.</p> <p>(3) Right for judicial review: Include in PPL</p>

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					specific reference to right for judicial review.
(c) Rules establish the matters that are subject to review.	<p><i>Summary: PPL 2005 establishes the matters that are subject to review.</i></p> <p>A.96 PPL 2005 Grounds for complaint A.96 PPL 2005 provides that competitors that consider themselves to have been affected during the course of the procurement procedure have the right to submit a complaint to the public service [procuring entity] on three grounds (“grounds for complaint”):</p> <p>Ground 1 (A.96(1)(a) PPL 2005): Failure to fulfil the rules laid down in the PPL 2005 or implementing regulations</p> <p>Ground 2 (A.96(1)(b) PPL 2005): Failure to fulfil the terms and conditions stated in the pre-qualification or competition [tender] documents</p> <p>Ground 3 (A.96(1)(c) PPL 2005): Failure to comply with a decision adopted by the jury which may infringe existing legal rules.</p> <ul style="list-style-type: none">Decisions adopted by a jury: A.80 PPL 2005 provides that a competition jury is competent to: Admit or exclude competitors based on requirements set out in pre-qualification or competition documents; decide on pre-qualification of competitors on basis set out in pre-qual documents; assess bids and qualify competitors according to selection criteria laid down in competition documents; assess to select and classify competitors; and propose a competitor to be awarded a contract <p>PPL 2022: PPL 2022 A.174 provides for a right to challenge and hierarchical appeal in respect of all acts, omissions and documents concerning procurement and procurement procedures.</p>		Criterion met		

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(d) Rules establish time frames for the submission of challenges and appeals and for issuance of decisions by the institution in charge of the review and the independent appeals body.	<p><i>Summary: Complaint: There are rules which establish time frames for submission of complaints and for issuance of decisions on complaints and hierarchical appeal.</i></p> <p>Complaint: A.98 PPL 2005 requires the public service [procuring entity] to decide on the admission/acceptance for consideration of a complaint within 5 days of receipt. The sole ground for non-admission/non-acceptance for consideration shall be that the complaint is lodged after the relevant deadline. Where the complaint is accepted the public service must make a decision on an admissibility of a complaint within 2 days of acceptance and it must also decide on whether the procedure shall be suspended (subject to a prohibition on bid opening, negotiation and contract award pending resolution of a complaint or appeal)</p> <p>A.100 PPL 2005 requires that “once the case has been analyzed” the competent authority shall decide, within a 12-day deadline, whether it accepts or rejects the complaint. The decision shall be recorded in writing, stating the grounds taken into consideration as well as the law applied. All interested parties shall be immediately notified of the decision.</p> <p>Hierarchical appeal: A.101 PPL 2005 provides that a hierarchical appeal against a decision on Complaint, shall be submitted to the competent authority within five days of notification of the decision on Complaint. A.103 provides that the decision to accept or refuse the appeal shall be made “once the case has been analyzed” within a five-day deadline and interested parties shall be immediately notified of that decision.</p> <p>PPL 2022: A.177 PPL 2022 Hierarchical [appeal] provides for hierarchical appeal against a decision on complaint and sets out time scales for submission of and decision on appeal.</p>		Criterion met		

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(e) Applications for appeal and decisions are published in easily accessible places and within specified time frames, in line with legislation protecting sensitive information.	<p><i>Summary: As noted as sub-indicator 1(h)(b) e, hierarchical appeal is not a public process. The legal framework does not, therefore, require applications for appeal and decisions to be published. PPL 2022 retains hierarchical appeal and does not provide for publication of applications or decisions on hierarchical appeal.</i></p> <p>PPL 2022: PPL 2022 does not require publication of applications for or decisions on hierarchical appeal in an easily accessible place on a central online platform. A.177 PPL 2022 requires notification of final decision on hierarchical appeal to stakeholders and if the sanction of non-participation in future procurement is applied, according to A.190 PPL 2022 this must be published on the procurement portal.</p>		<p>Criterion not met</p> <p>Applications for hierarchical appeal and decision on hierarchical appeal are not published in an easily accessible place on a central online platform to allow interested parties to be better informed as to the consistency and fairness of the process.</p>		Include provisions in PPL requiring publication for applications for hierarchical appeal and decisions on hierarchical appeal. Ideally, publication should be on a central online platform.
(f) Decisions by the independent appeals body can be subject to higher-level review (judicial review).	<p><i>Summary: Decisions on hierarchical appeal are subject to a right of judicial review although this is not specifically provided for in PPL 2005.</i></p> <p>There is no specific provision in the PPL establishing a right for judicial review of a decision made in hierarchical appeal. Any decision made by an administrative body, including a decision on hierarchical appeal is, however, subject to the general right of judicial review, according to Section 137(3) of the Constitution and A.9 of DL 32/2008, Law on Administrative Procedure (see sub-indicator 1(h)(f)). Judicial review of administrative acts should be lodged in the Administrative Courts. The Administrative Courts have not yet been established and thus judicial review of procurement related matter will be lodged in the district civil courts, with onward appeal to the civil Appeal Court. Rules on applications for and conduct of judicial review are governed by the Civil Procedure Code (<i>Código de Processo Civil</i>).⁵⁹</p>		<p>Criterion met</p>		

⁵⁹ Information in this paragraph provided by GoTL in response to questions from the Assessment Team, February 2022.

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	<p>PPL 2022: Judicial Guarantees: A.178 PPL 2022 provides that acts, omission and documents of the procurement and procurement procedure as well as decisions issued in the context of complaints and administrative appeals provided for in PPL 2022 are subject to right of judicial appeal (<i>recurso judicial</i>). A.179 provides that judicial appeal shall be brought before the competent court in accordance with rules of judicial organization within time limits laid down in legislation regulating administrative litigation.</p>				

1(i) Contract management

The legal framework provides for the following:

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<p>(a) Functions for undertaking contract management are defined and responsibilities are clearly assigned.</p>	<p><i>Summary: The Public Contracts Law and procurement best practice guidance includes some provisions on functions and responsibilities for contract management. The Public Contracts Law lacks detailed provisions on some matters required to ensure complete and timely contract implementation, such as on monitoring and supervision of contract delivery and monitoring contract performance clause. PPL 2022 partially resolves this issue.</i></p> <p>A.110 PPL 2005 provides that specific rules on public contracts are laid down in Government statute. DL 11/2005 Legal Regime of Public Contracts ("DL 11/2005" or "Public Contracts Law") establishes basic rules applicable to public contracts and allocates some functions and responsibilities for contract management related activities. The Public Contracts Law includes provisions on approval and signature, delegation of powers, work of the Contracts Committee as well as formalities regarding public contracts,</p>		<p>Criterion partially met</p> <p>The Public Contracts Law lacks detailed provisions on some matters required to ensure complete and timely contract implementation, such as monitoring and supervision of contract delivery and monitoring contract performance clauses</p>		<p>Include in the procurement legal framework clear and appropriately detailed provisions defining the functions and assigning responsibilities for undertaking contract management including monitoring and supervision of contract delivery</p>

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	<p>content of public contracts, guarantees. There are limited provisions on the responsibilities of the Public Service concerning contract performance, covering: transfer of signed contracts, liability for performance, damages and loss and jurisdiction for disputes (A.39 to A.42 Public Contracts Law). The Public Contracts Law does not include detailed provisions on monitoring contract delivery, inspection quality control or supervision, or monitoring of contract performance clauses designed to ensure social or environmental standards.</p> <p>A.43 Public Contracts Law give power to the Minister of Planning and Finance to issue additional instructions necessary for the implementation of the Public Contracts Law. Procurement Best Practice Guide 7 Managing Contracts refers to the appointment of an appropriately qualified contract manager who is named in the agreement and the importance of senior management oversight of contract management</p> <p>PPL 2022: PPL does not fully resolve the issue of lack of detailed provisions required to ensure complete and timely contract implementation Title V of PPL 2022 (Articles 97 to 197) incorporate into the PPL 2022 an amended version of the legal regime of public contracts, previously in the Public Contracts Law. A.119 PPL 2022 allocates to the public contracting body [<i>contraente público</i>] the powers to direct and supervise/monitor execution of the contract and modify and terminate the contract, with further provisions in A.120 & 121 on the exercise of those powers. PPL 2022 refers to monitoring and supervision in general terms and also includes provision on verification and final acceptance. It does not include further detailed provisions on monitoring contract delivery, inspection quality control or supervision, or monitoring of contract performance clauses designed to ensure social or environmental standards.</p>				<p>and monitoring contract performance clause. More detailed provisions could be incorporated in standard contractual documents for mandatory use.</p>

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(b) Conditions for contract amendments are defined, ensure economy and do not arbitrarily limit competition.	<p><i>Summary: conditions for contract amendments are set out in PPL 2005 but only in general terms, save in the case of contract price increase. PPL 2022</i></p> <p>A.7(3) PPL 2005 provides that after the award decision the parties may, by agreement, introduce adjustments of “an accessory or functional nature” provided that the public interest principles is taken into account.</p> <p>A.10(3) PPL 2005 provides that increase in contract price arising from contract modification, price review or amendment to the original contract is permitted provided that (1) it is duly justified and (2) the Minister of Planning and Finance has given consent. Authorization for Increase in contract price is stated to be exceptional where State budget funds are available subject to such increase not exceeding 10% of the original contract planned cost and below USD 40 000 (USD forty thousand). PPL 2005 A.10(4) provides that once the percentage or limit referred to is exceeded the competence to authorize the changes lies with the authority competent to authorize the contract according to the total acquisition cost (see PPL 2005 A.15).</p> <p>Sampled Procurement Documents publicly available, December 2021:</p> <p>Standard Procurement Document, Goods and Service, Standard Contract s. 10, permits unilateral changes to be made by the purchaser in relation to specification for goods manufactured for the purchaser, method of packing and shipping, place of delivery and changes in quantities plus provision on consequential cost adjustment.s.11 provided that all variation or modifications shall be made in writing and signed by the parties.</p> <p>Standard Procurement Document, medium works, Standard Contract includes Works Variation (s.39) and payment for variations provisions (s.40) and for variations to be included in updated works Program produced by the contractor.</p>		Criterion met		

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	<p>Procurement Best Practice Guide 7 Managing Contracts refers to Contract Variations and draws a distinction between (1) Administrative variations; and (2) Substantive Variations but does not cross reference to the relevant provisions in PPL 2005.</p> <p>In the context of Infrastructure Fund funded projects, the Infrastructure Fund Administration Manual, November 2020 ("IF Manual") refers at s.16.2, p.78 to CAFI rules on changes or modifications to contracts as it relates to quality, cost and delivery. Any changes to the contract/project funded through the Infrastructure Fund listed at s.16.2 are subject to mandatory approval by CAFI.</p> <p>PPL 2022: A.123 PPL 2022 Change of contract, sets out circumstances where change of contract is permitted, subject to safeguard provisions requiring that changes shall not lead to substantial changes in the subject matter of the contract; shall not prevent, restrict or distort competition and cannot lead to amendments which would have resulted in changes in the ranking of proposals or admission of other proposal; cannot result in an increase in contract value of more than 30%; cannot alter the economic balance of the contract in favorable terms.</p>				
(c) There are efficient and fair processes to resolve disputes promptly during the performance of the contract.	<p><i>Summary: the Public Contracts Law sets out processes for resolution of disputes in a fair and timely manner, with preference for amicable settlement and fallback provisions where appropriate, providing for adjudication or arbitration.</i></p> <p>A.27 Public Contracts Law concerns contents of the public contract. A.27(f) Public Contracts Law requires the contract to include provisions on the applicable legal regime and jurisdiction for dispute settlement.</p> <p>A.42 Public Contracts Law provides that any disputed concerning public contracts shall be submitted to the</p>		Criterion met		

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	<p>competent court of Timor-Leste, without prejudice to the assignment of the case to the court of arbitration when that is provided for under terms set out by law and in the contract.</p> <p>Dispute provisions in Standard Procurement Documents (Sampled Procurement Documents publicly available, December 2021)</p> <p>Standard Procurement Documents, Goods and Service, Standard Contract s17, provides that the purchaser and the supplier shall make every effort to resolve disagreements and disputes amicably by direct informal negotiation. Applicable law is the law of Timor-Leste (s.19).</p> <p>Standard Procurement Documents, Medium Works, Standard Contract s.24, provides for initial referral of disputes raised by a Contractor in respect of an Engineer's decision to be referred to amicable settlement by the Employer's Authorized Representative within 14 days of notification of the Engineer's decision.</p> <p>s.25 provides that all disputes which cannot be amicably settled shall be referred to adjudication or arbitration in accordance with laws of Timor-Leste presently in force.</p> <p>PPL 2022</p> <p>A.180 PPL 2022 Dispute Resolution, provides that parties to a contract may agree to be subject to arbitration. Recourse to arbitration must be provided for in the contract which must establish the applicable regime, place of arbitration and rules for appointing arbitrators.</p> <p>A.180 PPL 2022 Competent forum, requires issues arising from application of the procurement regime provided for in PPL 2022, including contractual relationships, to be submitted to the legislation in force and jurisdiction of competent courts.</p>				
(d) The final outcome of a dispute resolution process is enforceable.	<p><i>Summary: the Public Contracts Law provides for enforcement through the competent courts and, where relevant, resort to adjudication and arbitration. Timor-Leste has adopted the</i></p>		Criterion met		

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	<p><i>Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).</i></p> <p>A.27 Public Contracts Law concerns contents of the public contract. A.27(f) Public Contracts Law requires the contract to include provisions on the applicable legal regime and jurisdiction for dispute settlement.</p> <p>A.42 Public Contracts Law provides that any disputed concerning public contracts shall be submitted to the competent court of Timor-Leste, without prejudice to the assignment of the case to the court of arbitration when that is provided for under terms set out be law and in the contract.</p> <p>Arbitral awards: Timor-Leste adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) on 31 March 2021 ⁶⁰</p> <p>PPL 2022: A.180 PPL 2022 Dispute Resolution, provides that parties to a contract may agree to be subject to arbitration. Recourse to arbitration must be provided for in the contract which must establish the applicable regime, place of arbitration and rules for appointing arbitrators.</p> <p>A.180 PPL 2022 Competent forum, requires issues arising from application of the procurement regime provided for in PPL 2022, including contractual relationships, to be submitted to the legislation in force and jurisdiction of competent courts.</p>				

⁶⁰ Law of National Parliament No.6 of 2021 Approving legal regime for voluntary arbitration [Aprova o regime jurídico da arbitragem voluntária e procede à primeira alteração ao código de processo civil]. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2021/serie_1/SERIE_I_NO_14_B.pdf

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1(j) Electronic Procurement (e-Procurement)

The legal framework provides for the following:

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(a) The legal framework allows or mandates e-Procurement solutions covering the public procurement cycle, whether entirely or partially.	<p><i>Summary: There is no e-procurement system and PPL 2005 does not allow or mandate use of e-procurement solutions covering the public procurement cycle, whether entirely or partially. PPL 2022 addresses and resolves this issue.</i></p> <p>PPL 2022: Note: Gap in PPL 2005 addressed and resolved in PPL 2022: PPL 2022 allows for the use of electronic procurement when practical conditions permit. A.14 PPL 2022 Principle of electronic process requires Public Administrative Sector services and entities to use electronic means of procurement and contracting in order to promote administrative efficiency and transparency and requires advertisement on the Procurement Portal. PPL 2022 also contains provisions on use of electronic means for sending invitations, clarifications and contract signing PPL 2022 acknowledges practical constraints on the roll out of electronic procurement by including transitional rules pending announcement of full electronic processing of procurement and contracting.</p>		<p>Criterion not met</p> <p>At present, there is no e-procurement system and e-procurement solutions are not currently available. Thus, there are no provisions in PPL 2005 which allow or mandate e-procurement solutions covering the procurement cycle. It is advisable for the legal framework to allow for the introduction and roll out of e-procurement system/solutions, whilst acknowledging practical constraints due to lack of necessary user infrastructure across the country. In order to derive greatest benefit from the introduction of these new ways of working, the PPL should include provision to make use of the e-procurement system/e-procurement solutions mandatory for public services, when the solutions become available and necessary user infrastructure is achieved.</p>		Include provisions in the PPL setting out the principle of transparency, with unrestricted and full access to the e-procurement system for all stakeholders, as and when the e-procurement system becomes available and necessary user infrastructure is achieved.
(b) The legal framework ensures the use of tools and standards that provide unrestricted and full access to the	<p><i>Summary: There is no e-procurement system and thus PPL 2005 does not provide for the use tools and standards that provide unrestricted and full access to an e-procurement system taking into consideration privacy, security of data and authentication.</i></p>		<p>Criterion not met</p> <p>At present, there is no e-procurement system. Thus, there are no provisions in PPL 2005 for</p>		Include provisions in the PPL to ensure that requirements for

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system, taking into consideration privacy, security of data and authentication.			the use of tools and standards for access to an e-procurement system. With the potential introduction and roll out of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly address the requirements for tools and standards applying to an e-procurement system to provide unrestricted and full access, taking into consideration privacy, security of data and authentication.		tools and standards applying to an e-procurement system are met, to provide unrestricted and full access, taking into consideration privacy, security of data and authentication. Further detail may, for example, be included in rules on operation of the e-procurement system when it is rolled out.
(c) The legal framework requires that interested parties be informed which parts of the processes will be managed electronically.	<p><i>Summary: The is no e-procurement system and PPL 2005 does not require that interested parties be informed which parts of the processes will be managed electronically. PPL 2022 provides for transitional arrangements which will help to resolve this issue.</i></p> <p>PPL 2022: A.195 PPL 2022 Transitional rule, confirms that pending creation of conditions for full processing of procurement and contracting through electronic means, all procurement and contract documents can be presented in paper form and notifications and communications provided for in PPL 2022 can be made by mail or hand delivery.</p>		<p>Criterion not met</p> <p>At present, there is no e-procurement system. Thus, there are no provisions in PPL 2005 requiring interested parties be informed which parts of the processes will be managed electronically. With the potential introduction and roll out of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly set out a requirement for interested parties to be informed which parts of the</p>		<p>Include provision in the PPL requiring public services to inform interested parties which parts of the processes will be managed electronically as and when the e-procurement system becomes available. Consider Including in</p>

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	A.195(2) PPL 2022 provides for formal announcement of transition to full electronic processing of procurement and contracting documents.		processes will be managed electronically, which can then be reflected in content of standard bidding documents for mandatory use. As a period of transition from paper based to e-procurement is likely, it is also very important for clarity and certainty to include provisions in the legal framework to clarify whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-Procurement.		standard bidding documents information on which parts of the processes will be managed electronically. Include provisions in the legal framework confirming whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-Procurement.

1(k) Norms for safekeeping of records, documents and electronic data

The legal framework provides for the following:

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(a) A comprehensive list is established of the procurement records and documents related to transactions including contract management. This	<i>Summary: PPL 2005 lists procurement records and documents to be retained by procuring entities, including information on contracts awarded. Public access to such documents is governed by Decree Law 43/2016 concerning Access to Official Documents.</i>		Criterion met		

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should be kept at the operational level. It should outline what is available for public inspection including conditions for access.	<p>Procurement folder: A.24 (1) PPL 2005 requires entities authorized to undertake procurement operations, to [create] and retain a folder containing at the least the following: Annual procurement plan: data relating to procurement notices and invitations to tender; results of procedures, including the names of companies/individuals award contracts as well as the amount of the contract awarded; information concerning measures applied to the competitors; all remaining information likely to be required under law. A.24(2) PPL 2005 provides that rules relating to the record of operations and of suppliers and seller may be regulated by [ministerial dispatch] from the Minister of Planning and Finance. A.25 PPL 2005 concerns records of vendors and classification of contracting parties.</p> <p>Public availability of procurement records and documents are governed by DL 43/2016 concerning Access to Official Documents. DL 43/2016 provides a general right of access by the public to official documents in accordance with general principles of transparency, equality, impartiality and protection of personal data, subject to specified safeguards (conditions) in relation to access and exclusions. This Decree Law applies to bodies and services of the direct and indirect administration of the State, municipalities, public companies and other entities in the exercise of administrative functions of authorities/public authorities. The definition of “official documents” includes memoranda, minutes, reports and contracts.</p> <p>PPL 2022: A.19 PPL 2022 [Procurement] File, requires the procuring authority to record all communications, acts and other documents relating to the procurement process and contracting in a single organized record (archive). A.19(3) PPL 2022 provides that the archive shall be retained, enabling its consultation by different subjects of supply and consulting as well as by the inspection, control and audit services of the</p>				

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	public administrative sector and judicial authorities. The archive must be retained in physical and digital form for a minimum period of 10 years.				
(b) There is a document retention policy that is both compatible with the statute of limitations in the country for investigating and prosecuting cases of fraud and corruption and compatible with the audit cycles.	<p><i>Summary: Legal requirements for document retention are compatible with the audit cycle but it is possible that it is not compatible with statute of limitations for investigating and prosecuting some cases of fraud and corruption where the related offense attracts a long prison sentence. PPL 2022 does not resolve this issue.</i></p> <p>A.63 Law of National Parliament No.2 of 2022 State General Budget and Public Finance Management Framework ("Law 2/2022") ⁶¹ requires maintenance of physical and digital records of all budget operations (which includes procurement) for at least ten years after they are carried out. This is compatible with the audit cycle.</p> <p>Articles 292 to 302 of the Criminal Code ⁶² (Código Penal) refer to crimes committed in public office, including passive and active corruption, embezzlement, abuse of power and economic participation in a business. Prison sentences for such offences range from 1 to 15 years, depending on the nature of the offence. Article 110 provides that the statute of limitations varies as it is linked to the maximum possible length of the prison sentence for a particular crime. The statute of limitations is between 4 and 20 years from the time of the criminal act.</p> <p>For example, if the crime is Active Corruption for an illegal end (A.294(1) Criminal Code) the maximum possible prison sentence is 10 years and thus the limitation period within which to bring a prosecution is 15 years. In this case, it appears</p>		<p>Criterion not met</p> <p>The 10-year retention period provision for maintenance of records of all budget operation provided for in A.62 Law of National Parliament 2/2022 does not align with statute of limitations for prosecution of fraud and corruption provided for in the Criminal Code under which the limitation period can range from 4 to 20 years, depending on the alleged offense and related potential maximum prison sentence.</p>		Review provisions on retention of procurement related documents and revise as appropriate to ensure alignment with statute of limitations for prosecution of fraud and corruption.

⁶¹ Law of National Parliament No. 2 of 2022 State General Budget and Public Finance Management Framework [Enquadramento do Orçamento Geral do Estado e da gestão financeira pública]. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2022/serie_1/SERIE_I_NO_7_A.pdf

⁶² Criminal Code [Código Penal] 2009. Jornal da República https://www.mj.gov.tl/jornal/files/Codigo_Penal.pdf

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	<p>that procurement records of potential relevance to a prosecution may have been destroyed before the expiry of the limitation period for prosecution.</p> <p>PPL 2022: A.19 PPL 2022 [Procurement] File requires the procuring authority to record all communications, acts and other documents relating to the procurement process and contracting in a single organised record (archive). A.19(3) PPL 2022 provides that the archive shall be retained in physical and digital format for a minimum period of 10 years.</p>				
(c) There are established security protocols to protect records (physical and/or electronic).	<p><i>Summary:</i> A.63(1) Law 2/2022 requires maintenance of physical and digital records of all budget operations (which includes procurement) for at least ten years after they are carried out. The Assessment Team was unable to establish whether there are procurement-specific security protocols to protect physical and/or electronic procurement files.</p>		<p>Criterion not met</p> <p>There are requirements for maintenance of both physical and electronic records, but it is not clear where there are established procurement-specific security protocols to protect physical and/or electronic procurement files.</p>		Consider preparation of procurement-specific security protocols to protect physical and/or electronic procurement files.

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1(l) Public procurement principles in specialized legislation

The legal and regulatory body of norms complies with the following conditions:

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(a) Public procurement principles and/or the legal framework apply in any specialised legislation that governs procurement by entities operating in specific sectors, as appropriate.	<p><i>Summary: there is legislation creating a specialized procurement regime for procurement of drugs, medical consumable and medical equipment by the Drugs and Health Equipment Service. PPL 2022 will revoke this regime and PPL 2022 will apply to procurement of drugs, medical consumable and medical equipment. The organic laws establishing some state enterprises (including electricity and water) require those companies to comply with PPL 2005. DL 14/2003 on Public Enterprises (Empresas Públicas) provides for Public Enterprises to prepare internal rules of procedure, but does not refer directly to obligations in terms of public procurement. PPL 2022 does not resolve the issue of lack of clarity as to application of PPL 2022 or procurement principles to procurement by state enterprises.</i></p> <p>There is a special procurement regime for procurement falling under the competences of the Drugs and Health Equipment Service (SAMES - <i>Serviço Autónomo de Medicamentos de Saúde</i>). SAMES is a “public institution” (<i>instituto público</i>)(IP) within the Ministry of Health in Timor-Leste that enjoys financial, administrative and patrimonial autonomy (see sub-indicator 6(b) for information on establishment and functions). Decree Law No.2 of 2009 Special regime for Drugs and health equipment procurement (SAMES), as amended ⁶³ (“DL 2/2009”) establishes a special regime for purchase of drugs, medical consumable and medical equipment required for the functioning of the health system as well as services and works execution within the competences of SAMES. The</p>		<p>Criterion partially met</p> <p>It is unclear whether or to what extent PPL 2005 or public procurement principles (e.g., competitive procedures, transparency fairness, value for money decisions) apply to procurement by all state owned enterprises across the spectrum of public service delivery, using state funds. These risks reducing transparency and accountability in the expenditure of state funds.</p>		<p>Review the rules applying to state owned enterprises to ensure consistency of application of provisions requiring PPL or public procurement principles to be applied when procuring for public service delivery using state funds. Also consider obliging all SOEs to publish user-friendly guidance for suppliers and information on the conduct and evaluation of procurement using state funds</p>

⁶³ Decree Law No.2 of 2009 Special Procurement Regime for SAMES [Regime Jurídico Especial de Aproveitamento do Serviço Autónomo de Medicamentos e Equipamentos de Saúde, E.P (SAMES)], as amended by Decree Law No.12 of 2016.

Jornal da República https://mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no2.pdf

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	<p>procedures available are listed at A.7: a) Public tender mandatory for contracts exceeding USD 1 million; b) Restricted tender to which only invited competitors may submit bids, for contracts above USD 500,000 and below USD 1 million; c) Request for quotations for contracts up to USD 500,000. d) Direct agreement is permitted in exceptional cases where special circumstances listed in A.12 are fulfilled. There is a section (section VII, A.51-54) on Claims [complaints] and Appeals to CPAP (standing committee on bid evaluation) and hierarchical appeal to the Minister of Health. <i>This legislation will be revoked when PPL 2022 comes into force (see below).</i></p> <p>District Integrated Development Planning (PDID) system procurement regime: A.2(6) PPL 2005 provides for the use of special procedures for the award of public works for civil construction works and public works involving an amount not exceeding USD 250,000 to local companies headquartered in sub-districts.⁶⁴ This has been substituted by DL No.4 of 2012 (DL 4/2012)⁶⁵ which established a new district integrated development planning system (<i>Planeamento de Desenvolvimento Integrado Distrital</i>)(PDID) with provision for special procurement regime. Decree Law No.11 of 2013 (DL 11/2013)⁶⁶ sets out the detailed public procurement regime for procurement at district level of construction works of a value up to USD 500,000 identified in the PDID by districts, sub-district and sucos. It reserves award of contracts to companies based in the district where the project is to be implemented. This regime is subject to principles of legality,</p>				

⁶⁴ Information provided by MoF: Originally regulated by DL 2/2010, now revoked and substituted by DL 11/2013 District Integrated Development Planning Regime (PDIM).

⁶⁵ Decree Law No.4 of 2012 District Integrated Planning Development [Planeamento de Desenvolvimento Integrado Distrital]

https://www.mj.gov.tl/jornal/public/docs/2012/serie_1/serie1_no6.pdf

⁶⁶ Decree Law No.11 of 2013 District Integrated Planning Development (PDID) legal procurement regime [Regime jurídico de aprovisionamento do PDID].

http://www.mj.gov.tl/jornal/public/docs/2013/serie_1/serie1_no27.pdf

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	<p>transparency and accountability and procedural safeguards such as publication of invitation to public tender, specifying qualification criteria and content of tender documents as well as defining the stages of the public tender. Right of hierarchical appeal applies and decisions on hierarchical appeal are the subject of judicial review.</p> <p>State Owned Enterprises PPL 2005 does not address the issue of whether and to what extent State Owned Enterprises are subject to the PPL 2005. Decree Law No.14 of 2003 on Public Enterprises (<i>Empresas Públicas</i>)(“DL 14/2003”)⁶⁷ provides for the establishment and operation of companies set up by the State with their own capital or capital provided by other public entities. These companies are legally and judicially independent and have financial autonomy. DL 14/2003 provides for Public Enterprises to prepare internal rules of procedure, but does not refer directly to obligations in terms of public procurement and whether or not the PPL or other specific procurement regime applies. Some public enterprises, such as the banking sector, are active in the commercial market and the PPL does not apply to their activities. In the case of the electricity sector, EDTL (<i>Electricidade de Timor-Leste</i>)⁶⁸ and water sector, BTL⁶⁹ (clean water and sanitation) , the organic laws establishing these companies specifically provide that the PPL 2005 shall apply, subject to specified exclusions.</p> <p>PPL 2022: A.193 PPL 2022 revokes DL 2/2009 Special regime for Drugs and health equipment procurement (SAMES)(as</p>				

⁶⁷ Decree Law No.14 of 2003 State Enterprises [Empresas Públicas]. Jornal da República https://mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/14_2003.pdf

⁶⁸ EDTL: Electricidade de Timor-Leste (EDTL EP), established by by Decree Law No.29 of 2020 Creates Public Company Electricity Timor-Leste and approves respective statutes [Cria a empresa pública Eletricidade de Timor-Leste e aprova os respetivos Estatutos]. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_30.pdf

⁶⁹ Bee/BTL: Bee Timor-Leste (BTL EP), established by Decree Law No.41 of 2020 Creates Public Company Bee Timor-Leste and approves respective statute [Cria a Empresa Pública Bee Timor-Leste e Aprova os Respetivos Estatutos]. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_39_A.pdf

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	amended), bringing this type of procurement within the coverage of PPL 2022. A.197 PPL 2022 provides that the PPL 2022 shall come into force on 1 January 2023.				
(b) Public procurement principles and/or laws apply to the selection and contracting of public private partnerships (PPP), including concessions as appropriate.	<p><i>Summary: The PPP law requires use of competitive procedures for procurement save in exceptional circumstances and provides that PPP procurement procedure should be conducted in accordance with principles of justice, equality, transparency, competition, efficiency and accountability</i></p> <p>A.6(3) PPP Law provides that the procurement procedure shall be conducted in accordance with principles of justice, equality, transparency, competition, efficiency and accountability. A.6(4) sets requires that procurement of PPPS should ensure the best: value for money, risk sharing between public and private entities and sustainability of the project. A.11 PPP Law require the identification and selection of a private partner for a PPP agreement to be made by means of a competitive competition, save in exceptional circumstances provided for in law. The competitive procedures for procurement of PPPs, are:</p> <ul style="list-style-type: none"> • Open competitive tendering • Restricted competitive tendering • Competitive dialogue - in exceptional cases where a project is particularly complex • Design competition – were appropriate, particularly in the areas of planning, architecture and engineering as well as data processing. <p>Two stage procedures are permitted. PPP Law A.12 lists exceptions to the requirement for competitive call for tenders, in summary: national defense or national security; where there is only one entity capable such as cases where there are exclusive rights; market failure in response to issue of pre-qualification documents or request</p>		Criterion met		

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	for proposals; and where rights of substitution are exercised by lenders or the State. Unsolicited proposals are permitted and may be considered and assessed in specified circumstances (PPL 2005 A.13). PPP activity has, to date, been very limited (see 1(l)(c)).				
(c) Responsibilities for developing policies and supporting the implementation of PPPs, including concessions, are clearly assigned.	<p><i>Summary: The National Directorate of Public-Private Partnerships (Direção Nacional de Parcerias Público-Privadas) (DNPPP) (formerly the UPPP) has primary responsibility for developing policies and supporting the implementation of PPPs.</i></p> <p>DL 8/2014 sets out the powers and functions [activities] of the Public-Private Partnership Unit (Unidade de Parcerias Público-Privadas) (UPPP) established within the Ministry of Finance. A.3 lists the functions [activities] of the UPPP which are, in summary: managing and implementing the cycle of PPP projects in coordination with public sector bodies and CAFI (Council for Administration of Infrastructure Fund); mobilizing consultants and advisors to assist in implementation of PPP; in collaboration with relevant entities prepare agreement and other standard documents for use in PPP; prepare and maintain up to date guidelines on PPP including all laws, regulations, instructions, directives and guidelines including templates, standardized documents and samples, together with an easy-to-use guide on their implementation; request a public sector body or private partner to provide information, documents and data in order to monitor quality/cost; provide training to public sector on PPPs and share best practice and knowledge with public and private sector; any other function [activity] granted by law. According to DL 8/2014, the UPPP provides technical support to CAFI through the Secretariat of Major Projects. This technical support includes issues relating to policy and regulation that have an impact on PPP agreement, options and reforms and other advice in support</p>		Criterion met		

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	<p>of development and maintenance of PPP delivery. The UPPP was upgraded to a Directorate in 2019 (see below)</p> <p>National Directorate of Public-Private Partnerships: According to A.8, Ministry of Finance Organic Law (Decree Law No.28 of 2019 as amended by Decree Law No. 43 of 2020) the National Directorate of Public-Private Partnerships (<i>Direção Nacionalde Parcerias Público-Privadas</i>) (DNPPP) is the service of the Directorate-General for Management and Mobilisation of External Resources (DGGMRE) responsible for negotiation and conclusion of PPP contracts as well as for monitoring and evaluating their implementation. Activities of DNPPP are listed in A.8(2) and include negotiation with investors, facilitation of the signing and supervision of implementation of PPP contract, financial assessment and providing opinions on financing, supporting negotiation of contractual terms and risk allocation, provision of specialist technical advice, ensuring that feasibility studies are conducted, monitoring implementation and drawing up report on each PPP for accountability purposes. A.8(2) also includes within the activities of DNPPP collaboration with the legal service to improve the regulatory framework and improve capacities.</p> <p>Implementation of PPP in practice: PPP activity has, to date, been very limited. The Tibar Bay Port Project, which reached financial close in August 2018⁷⁰, was the first PPP project concluded in Timor-Leste. In practice, a special PPP project-specific Decree Law has been passed which includes provisions on the procurement of PPP and allocating responsibility for conduct of the procurement to DNPPP. In theory, conduct of the procurement of PPP could be allocated to a body other than the DNPPP. Financial arrangements</p>				

⁷⁰ World Bank Brief, February 2019

<https://www.worldbank.org/en/about/partners/brief/timor-leste-tibar-bay-port-gateway-to-the-world>

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	including payments under PPP projects, whether funded by the Infrastructure Fund or otherwise, are administered by the Ministry of Finance. ⁷¹ There are several PPP projects planned in the tourism sector. ⁷²				

2. Implementing regulations and tools support the legal framework.

2(a) Implementing regulations to define processes and procedures

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) There are regulations that supplement and detail the provisions of the procurement law, and do not contradict the law.	<p><i>Summary: There are no regulations issued by the Minister of Finance to supplement and detail the provisions of the procurement law.</i></p> <p>PPL 2005 makes reference to additional rules to be issued to supplement and detail aspects of PPL 2005. No such regulations have been issued.⁷³</p>		<p>Criterion not met</p> <p>There are no regulations issued by Minister of Finance to supplement and detail the provisions of PPL 2005, although these are envisaged in PPL 2005.</p>		Ensure that where procurement law refers to additional regulations to be issued to supplement and detail the provisions of that law, additional regulations are prepared, adopted and published promptly in a

⁷¹ Information provided to the Assessment Team in discussion with GoTL, February 2022.

⁷² <http://timor-leste.gov.tl/?p=30840&lang=en&lang=en>

⁷³ In discussions on this issue MoF explained to the Assessment Team that the issuing of additional regulations through secondary legislation had proved undeliverable in practice and PPL 2022 is intended as a stand-alone package which does not require further secondary legislation or implementation. It was further explained that PPL 2022, being a Decree Law, is simpler to change than a law passed by Parliament and should have the necessary flexibility for change if so required.

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					single accessible location. Regulations should be complementary to the procurement law and should not create inconsistencies
(b) The regulations are clear, comprehensive and consolidated as a set of regulations readily available in a single accessible place.	<i>Summary: There are no regulations of general application issued by Minister of Finance to supplement and detail the provisions of the procurement law.</i>		Criterion not met See sub-indicator 2(a)(a)		See sub-indicator 2(a)(a)
(c) Responsibility for maintenance of the regulations is clearly established, and the regulations are updated regularly.	<i>Summary: Responsibility for providing regulations lies with the Minister of Finance. There are no regulations of general application issued by the Minister of Finance and so there is no updating.</i> There are no regulations issued to supplement and detail the provisions of the procurement law. A.16 PPL 2005 lists the competences of the Minister of Finance relating to public procurement. A.16(d) PPL 2005 lists one of the competences of the Minister of Finance, being to provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL 2005. A.7 (4) PPL 2005 provides that the PPL 2005 and its complementary rules, administrative decisions and directives of general application relating to procurement procedure as well as modifications shall be immediately made public and systematically updated.		Criterion not met See sub-indicator 2(a)(a) – responsibility for maintenance is allocated but no regulations are published.		See sub-indicator 2(a)(a)

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	PPL 2022: Due to previous problems with failure to issue implementing regulations under PPL 2005, PPL 2022 has been prepared with a level of detail and content aimed at avoiding the need for subsequent legislation (implementing regulations). As the ministry responsible for procurement, the Ministry of Finance does, however, have power to prepare additional legislation if the need arises. ⁷⁴				

2(b) Model procurement documents for goods, works, and services

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) There are model procurement documents provided for use for a wide range of goods, works and services, including consulting services procured by public entities.	<p><i>Summary: There are “standard procurement documents” for goods and services, medium works and consultancy services but the documents are, for the most part, sample documents with project-specific information inserted rather than a full set of standardized templates for completion by users. The collection of standard procurement documents is not wide ranging or comprehensive. They are available only in English. There are no standard procurement documents for specialized procurement, such as IT or more complex procurements.</i></p> <p>Standard Procurement Documents Standard Procurement Documents are available to download from the MoF website procurement page.⁷⁵ There are standard bidding documents for:</p> <ul style="list-style-type: none"> • Invitation to Bid for Goods and Services -including Instructions to Bidders, bidding documents and contract documents. There is also an Invitation to bid letter for office supply. 		<p>Criterion not met</p> <p>Standard Procurement Documents are published but they are not clearly presented as standardized templates for completion by users and the collection is not wide ranging or comprehensive. Standard Procurement Documents do not appear to have been updated since 2010/11 and are available only in English, raising the question to what extent the Standard Procurement Documents are of practical use and whether they are of any assistance in training and capacity building. Both the procuring entities and the</p>		Prepare and publish standard procurement documents, in relevant official and/or working languages, aligned with the PPL in force in the form of user-friendly templates for completion, with guidance notes on their use. Ensure that the standard procurement documents cover

⁷⁴ Information provided by Ministry of Finance in response to clarifications from the Assessment Team.

⁷⁵ <https://www.mof.gov.tl/government-procurement/procurement-documents-templates/?lang=en> Accessed 14 December 2020, checked 07 January 2022

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	<ul style="list-style-type: none"> • Invitation to Bid for Medium Works - Instructions to Bidders, bidding documents and contract documents. • Request for Quotation for Goods and Services – short form RFQ plus one-page terms and conditions • Request for Proposal (quote) for Consultancy Services - Instructions to Bidders, proposal documents and sample contract plus checklist and evaluation forms <p>In practice, for the most part, the Standard Procurement Documents are sample documents, with project-specific information inserted, rather than a full set of standardized templates for completion by users.</p> <p>The Standard Procurement Documents are available only in English and date from 2010/2011.</p> <p>There are no Standard Procurement Documents for small or large works. There are no Standard Procurement Documents on the Ministry of Finance website for specialized procurement.</p>		<p>private companies could benefit from a set of bidding documents in Timor-Leste official languages, standardized where possible, tailored to Timor-Leste regulations, proportionate to the need and covering a wider range of procurement</p> <p>This is even more urgent now that PPL 2022 has been adopted. Such documents are essential tools to support efficiency and transparency in procurement and to encourage broad participation from potential competitors.</p>		<p>an appropriate range of goods, works and services procurement as well as types of procurement from simple forms of procurement to procurement of complex projects. Consider preparing and publishing templates for more specialised procurement which is conducted regularly, such as procurement of IT and in the health sector. Ensure that it is clear whether/to what extent use of standard bidding documents is mandatory and relevant legal provisions mandate that use. Put into place measures to ensure regular</p>

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					review and updating of standard procurement documents, including clear assignment of responsibility for review and updating.
(b) At a minimum, there is a standard and mandatory set of clauses or templates that reflect the legal framework. These clauses can be used in documents prepared for competitive tendering/bidding.	Summary: The Standard Procurement Documents contain provisions including instructions to bidders, bidding documents and general conditions of contract for use in competitive tendering/bidding.		Criterion not met It is unclear what is the status of the standard bidding documents and templates and, in particular, whether use of the Standard Procurement Documents, or particular clauses of parts of the Standard Procurement Documents, is mandatory.		See sub-indicator 2(b)(a)
(c) The documents are kept up to date, with responsibility for preparation and updating clearly assigned.	<i>Summary: The Standard Procurement Documents published on the Ministry of Finance webpage have not been regularly updated since their publication in 2010/11. Responsibility for preparation and updating is not clearly assigned.</i> A.16 PPL 2005 lists the competences of the Minister of Finance relating to public procurement A.16(d) PPL 2005 lists one of the competences of the Minister of Finance, being to provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL 2005; but does not specifically refer to preparation and updating of model procurement documents. A.17 PPL 2005 lists the competences of the Procurement Service (<i>Serviço de Aproveitamento</i>) but does not		Criterion not met The standard bidding documents have not been regularly updated. Responsibility for preparation and updating of model procurement documents is not clearly assigned.		See sub-indicator 2(b)(a)

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	<p>specifically refer to preparation and updating of model/standard procurement documents.</p> <p>The Team reviewed two sample standard procurement documents, namely: 1) Goods and Services and (2) Invitation for Bid for Medium Works following prequalification. Generally, the standard documents were found to be of good quality, comprehensive and specific enough to ensure that bidders prepare complete and responsive bids. These documents include the following sections: instructions to bidders, standard conditions of contract, form of contract, bid/contract securities (bid, performance and advance payment securities), drawing and technical specifications and letter of acceptance.</p> <p>The standard conditions of contracts also contain the basic required clauses. The content of the standard contract conditions for medium works and goods are generally consistent with internationally accepted practices, and standard conditions of contracts for goods and works financed by MDBs (e.g., World Bank). Overall, the standard contract conditions provide information that enables participants to understand the allocation of risk between parties to a contract as well as other obligations that the signatories to the contract will incur. The standard contract conditions appear to be fair and balanced.</p> <p>In particular, the standard conditions for medium works include provisions on risks to parties, insurance for works, termination, procedures for dispute resolution, payments, delay damages, time and quality control, compensation events, variations, price adjustment, force majeure, correction of defects, completion and acceptance, etc. Similarly, the standard conditions for goods include provisions on inspections, packaging, delays damages, compensation, variations, dispute resolution, payment, termination, quality</p>				

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	<p>control, acceptance, indemnification, warranties, etc. It is found, however, that the documents both for works and goods lack provisions reflecting the laws that impact contracts and their performance, and do not explicitly require compliance with safety, environment, labor, child and forced labor, and equal opportunity and non-discrimination in employment laws.</p> <p>PPL 2022: A.24(2)(d) PPL 2022 National Procurement Commission (CNA), provides that CNA is responsible for preparation of models and forms with a view to standardizing procedures.</p>				

2(c) Standard contract conditions

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendatio ns
(a) There are standard contract conditions for the most common types of contracts, and their use is mandatory.	<p><i>Summary: There are standard contract conditions for most common types of contracts. Use of standard forms of contract is mandatory</i></p> <p>Decree Law no.11 of 2005 Legal Regime for Public Contracts, A.26 Formalities regarding public contracts requires that the contract shall be drawn up by the Public Service “with the mandatory use of Standard Contract Form, without prejudice to any adjustments that may be required in each case.”</p> <p>Decree Law no.11 of 2005 Legal Regime for Public Contracts, A.27 Contents of the public contract, sets out the minimum content of a public contract being identification of the parties, object of the contract, conditions and deadlines, price and form of payment, penalties for non-fulfilment, applicable regime and jurisdiction for settlement of disputes. All contracts may contain necessary annexes which form an integral part of the contract.</p>		Criterion met		

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>The Standard Procurement Documents include standard contract conditions for (1) Goods and Services and (2) Medium Works (see note on medium works documents in sub-indicator 2(b)(a) Model procurement documents). The standard Request for Quotation for Goods and Services includes a short form RFQ plus one-page standard terms and conditions. The standard Request for Proposal (quote) for Consultancy includes a sample contract. In addition, there is a standard Consultancy Agreement available to download from the Ministry of Finance website, to be used where there is a request for tenders.</p> <p>PPL 2022: A.101 Contract elements, lists the basic content of the contract.</p>				
<p>(b) The content of the standard contract conditions is generally consistent with internationally accepted practice.</p>	<p><i>Summary: The standard contract conditions are contained within the standard bidding documents. The standard contract have not been updated to reflect current internationally accepted practice.</i></p> <p>The Team reviewed two sample standard procurement documents, namely: 1) Goods and Services and (2) Invitation for Bid for Medium Works following prequalification. Generally, the standard documents were found to be of good quality, comprehensive and specific enough to ensure that bidders prepare complete and responsive bids. These documents include the following sections: instructions to bidders, standard conditions of contract, form of contract, bid/contract securities (bid, performance and advance payment securities), drawing and technical specifications and letter of acceptance.</p> <p>The standard conditions of contracts also contain the basic required clauses. The content of the standard contract conditions for medium works and goods are generally consistent with internationally accepted practices, and</p>		<p>Criterion partially met</p> <p>The standard contract conditions appear to be based on international standard models at the time the documents were prepared in 2010/11. Publicly available documents have not been updated to reflect current internationally accepted practice.</p>		<p>Prepare standard contract conditions, as appropriate for the subject matter and nature of the procurement, and in line with current internationally accepted practice.</p>

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	<p>standard conditions of contracts for goods and works financed by MDBs (e.g., World Bank). Overall, the standard contract conditions provide information that enables participants to understand the allocation of risk between parties to a contract as well as other obligations that the signatories to the contract will incur. The standard contract conditions appear to be fair and balanced.</p> <p>In particular, the standard conditions for medium works include provisions on risks to parties, insurance for works, termination, procedures for dispute resolution, payments, delay damages, time and quality control, compensation events, variations, price adjustment, force majeure, correction of defects, completion and acceptance, etc. Similarly, the standard conditions for goods include provisions on inspections, packaging, delays damages, compensation, variations, dispute resolution, payment, termination, quality control, acceptance, indemnification, warranties, etc.</p> <p>It is found, however, that the documents both for works and goods lack provisions reflecting the laws that impact contracts and their performance, and do not explicitly require compliance with safety, environment, labor, child and forced labor, and equal opportunity and non-discrimination in employment laws.</p>				
(c) Standard contract conditions are an integral part of the procurement documents and made available to participants in procurement proceedings.	<p><i>Summary: standard contract conditions are an integral part of the procurement documents. PPL 2005 requires that in competitive procedures the procuring entity provides each competitor with a set of competition [procurement] documents.</i></p> <p>The Standard Procurement Documents, which are made available to participants in procurement proceedings, include standard contract documents for (1) Goods and Services and</p>		Criterion met		

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>(2) Medium Works (see note on medium works documents in sub-indicator2(b)(a) Model procurement documents)</p> <p>The standard Request for Quotation for Goods and Services includes a short form RFQ plus one-page standard terms and conditions</p> <p>The standard Request for Proposal (quote) for Consultancy includes a sample contract.</p> <p>In addition, there is a standard Consultancy Agreement available to download from the Ministry of Finance website to be used where there is a request for tenders</p> <p>A.62 PPL 2005 requires that in competitive procedures the procuring entity provides each competitor with a set of competition [procurement] documents.</p> <p>The minimum content requirements for competition [procurement] documents are set out in Appendix 6 PPL 2005. They include instructions for preparing and submitting bids; features of the goods and services which are the subject of the procurement, with minimum information specified including specifications, quality requirements, terms and conditions, contract delivery dates, qualification requirements, methods for assessing bidder qualification, bid security, contract performance security, power of attorney, subcontracting information.</p> <p>PPL 2022: A.45 PPL 2022 Invitation requires that elements listed in A.44(2) are included in the invitation. This includes special supply and/or contracting conditions, if any.</p> <p>A.47 PPL 2022 Specifications form part of the procurement documents and include clauses, general and special, of a legal nature which must be included in the contract.</p>				

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2(d) User's guide or manual for procuring entities

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There is (a) comprehensive procurement manual(s) detailing all procedures for the correct implementation of procurement regulations and laws.	<p><i>Summary: there is a set of Best Practice Guides which cover the process for correct implementation of procurement regulations and laws, but these are available only in English and have not been updated.</i></p> <p>The Ministry of Finance has published a series of 10 Best Practice Guides which are available to download from the Ministry of Finance procurement web page⁷⁶. The Best Practice Guides are available only in English and date from 2010/2011. They have not been updated to fully reflect legislative changes.⁷⁷</p> <p>The Best Practice Guides cover the following steps/issues arising in the procurement process: 1. Strategic Procurement Planning; 2. Tender Specification Writing; 3. Tender Processes and Tender Documents; 4. Tender Bid Evaluation; 5. Post-tender Negotiations; 6. Establishing Contracts; 7. Managing Contracts; 8. Annual Procurement Report; 9. Suppliers Registry; 10. Decentralization and Accreditation Ministry of Transport has published procurement guidelines on vehicle procurement, dated 21 January 2009 (Available in Tetum) Ministry of Finance published Guidelines on procurement procedures at the Ministry of Finance, Guideline no.4/2009/IVGC/MF. (Available in English)</p>		<p>Criterion partially met</p> <p>The Best Practice Guides date from 2010/2011, have not been updated to fully reflect legislative changes and are available only in English, raising the question to what extent the Standard Procurement Documents are of practical use and whether they are of any assistance in training and capacity building.</p>		<p>Prepare and publish Best Practice Guides (or equivalent), in relevant official and/or working languages, aligned with the PPL in force and consistent with standard procurement documents and standard contract conditions. Put into place measures to ensure regular review and updating of Best Practice Guides (or equivalent).</p>

⁷⁶ <https://www.mof.gov.tl/government-procurement/guide-to-government-procurement/?lang=en> accessed 14 December 2020

⁷⁷ Sampled Best Practice Guides: Best Practice Guide no.10 on decentralisation and accreditation of procuring entities. Procuring entity accreditation has been revoked by DL 1_2010; Best Practice Guide No.8 on Annual Procurement Report appears to be out of date.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	CNA website includes a link to “Best Practice Guide for Procurement” but no document is available when clicking on the link. ⁷⁸				
(b) Responsibility for maintenance of the manual is clearly established, and the manual is updated regularly.	<p><i>Summary: PPL 2005 lists one of the competences of the Procurement Service being to advise the Minister of Finance on procedures handbook to assist implementation, although there is no specific reference to ongoing maintenance. There is also reference to operational guidelines falling with in the functions of Direção Nacional de Aprovisionamento. There is no evidence that the Best Practice Guides have been updated regularly. PPL 202 allocates responsibility for preparing models and forms to CAN.</i></p> <p>A.17(1) PPL 2005 lists the competences of the Procurement Service, including: A.17(1)(d) PPL 2005 Advise the Minister of Finance on methodological parameters, procurement procedures and procedures handbook to assist implementation of the PPL 2005.</p> <p>A.32(2) MoF Organic Law lists the responsibilities of the National Procurement Directorate (<i>Direção Nacional de Aprovisionamento</i> (DNA), including to “(d) Develop, implement and disseminate standardized operational guidelines and procedures for procurement procedures and resources in the in area of procurement”</p> <p>PPL 2022: A.192 PPL 2022 provides that the CNA shall be responsible for preparing models and forms with a view to standardizing procedures.</p>		<p>Criterion not met</p> <p>There is no allocation of responsibility for the specific task of maintenance of the Best Practice Guides. The Best Practice Guides have not been regularly updated (see sub-indicator 2(d)(a)).</p>		Assign responsibility in legal framework for maintenance (review) and updating of Best Practice Guides, or equivalent.

⁷⁸ <http://www.cna.gov.tl/tp/best-practice-guide-for-procurement/>

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3. The legal and policy frameworks support the sustainable development of the country and the implementation of international obligations.

3(a) Sustainable Public Procurement (SPP)

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) The country has a policy/strategy in place to implement SPP in support of broader national policy objectives.	<p><i>Summary: Government objectives are aligned to the UN 2030 Sustainable Development Goals and public procurement is a driver in their achievement. Timor-Leste does not, however, have a specific policy or strategy to implement sustainable public procurement in support of national policy objectives.</i></p> <p>Government objectives are aligned to the UN 2030 Sustainable Development Goals and public procurement is a driver in their achievement. The National Strategic Development Plan 2011-2030 covers three key areas: social capital, infrastructure development and economic development all based on a cross cutting institutional framework. The objectives of the Strategic Development Plan 2011-2030 were reinforced by the VIII Constitutional Government Program five-year policy instrument that incorporates the “Roadmap for Implementation of the 2030 Agenda and the SDGs”⁷⁹ (“Roadmap”) based on the Strategic Development Plan 2011-2030 (SDP), which articulates Timor-Leste’s development goals and priorities.⁸⁰</p>		<p>Criterion not met</p> <p>Sub-indicator 3(a)(a) SPP Policy/Strategy Timor-Leste does not have a specific policy or strategy to implement sustainable public procurement in support of national policy objectives.</p>		<p>To be discussed</p> <p>Sub-indicator 3(a)(a) SPP Policy/Strategy Prepare a policy/strategy to implement SPP in support of broader national policy objectives.</p>

⁷⁹ Timor Leste’s Roadmap for Implementation of the 2030 Agenda and the SDGs <https://www.adb.org/sites/default/files/linked-documents/51063-001-sd-02.pdf>

⁸⁰ According to the Roadmap “The Government of Timor-Leste adopted the 2030 Agenda and Sustainable Development Goals through Government Resolution No. 34 of 2015 on 23 September 2015, two days before they were formally adopted by the United Nations at the General Assembly. This Resolution also mandated the establishment of a working group on SDG implementation to be chaired by the Prime Minister’s Office. Adoption of the 2030 Agenda and the SDGs was subsequently ratified by a resolution of the National Parliament on 18 November 2015. Resolution No 19/2015 also recommended that the Timor-Leste Government align its planning and budget systems with the SDGs. The Government subsequently issued a directive (Directive No 038/2015/XII/PM of 22 December 2015) establishing the SDG Working Group, and a Decree (Government Decree No. 1, 1 February 2016) mandating that the SDGs should be reflected in annual plans and budgets.”

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	The roadmap identifies a number of emerging priorities, including further strengthening inclusion and outreach, including through the focus on gender equality and empowerment of women, encouraging development of domestic private sector and small and medium enterprises. There is no specific policy or strategy to implement sustainable public procurement in support of national policy objectives				
(b) The SPP implementation plan is based on an in-depth assessment; systems and tools are in place to operationalise, facilitate and monitor the application of SPP.	<i>Summary: Timor-Leste does not have a specific policy or strategy to implement sustainable public procurement in support of national policy objectives and thus there is no implementation plan.</i>		Criterion not met Sub-indicator 3(a)(b) SPP Policy/Strategy implementation plan Timor-Leste does not have a specific policy or strategy to implement sustainable public procurement in support of national policy objectives and thus there is no implementation plan.		Sub-indicator 3(a)(b) SPP Policy/Strategy implementation plan Undertake and in-depth assessment in order to prepare an implementation plan for SPP policy/strategy. The SPP implementation plan should identify the institution to lead on this development, systems, tools and capacity building measures required to operationalize, facilitate and monitor the application of

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					SPP. Responsibilities, timelines and funding for implementation should also be included in the implementation plan.
(c) The legal and regulatory frameworks allow for sustainability (i.e., economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.	<p><i>Summary: PPL 2005 provides for use of some measures which fall within the general heading of “sustainable public procurement” such as life-cycle costing, but these focus on evaluation. The measures are piecemeal, do not address all stages of the procurement lifecycle and are not part of a wider sustainable public procurement strategy. PPL 2022 improves but does not fully resolve this issue.</i></p> <p>For example:</p> <p>Use of price and non-price attributes and consideration of life-cycle cost in evaluation</p> <p>A.86(1) PPL 2005 provides that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria.</p> <p>A.86(2) PPL 2005 requires evaluation to take into account cost/benefit analysis on a life-cycle basis.</p> <p>A.86(6) PPL 2005 requires financial analysis for the entire life cycle of the subject matter of the procurement and refers specifically to avoiding cheaper produces or services with inferior quality that might cost more in the long term due to maintenance costs.</p> <p>Promotion of local development and industry in evaluation</p> <p>A.86(5) PPL 2005 provides that local development and industry is a factor to be taken into account and evaluated, taking account of: Promotion of Timor-Leste’s industry and</p>		<p>Criterion partially met</p> <p>Sub-indicator 3(a)(c) Incorporation of SPP into procurement cycle</p> <p>PPL 2005 does not contain comprehensive measures allowing for all aspects of sustainability (economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.</p>		<p>Include provisions in PPL to allow for all aspects of sustainability (economic, environmental (including climate change), and social (including gender responsive public procurement)) to be incorporated at all stages of the procurement cycle – from planning to delivery and contract conclusion. Provisions in PPL should be supported by practical guides on how to incorporate and apply</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p>business capacity; Support to the East Timorese medium and small businesses in order to ascend to the State's purchasing market and the capacity of supplying the goods and their maintenance during their duration; The number of jobs to be created for the Timorese; the level of transference of capacity and technology; Proportion of goods and services acquired locally; Opportunities for regional and district development; Local capacitation or programs supported by the candidate. A.86(7) PPL 2005 Declaration of commitment [local involvement]: For contracts exceeding USD 100 000 (USD one hundred thousand) a declaration of commitment is required to creation of local jobs, knowledge/technology transfer and proportion of goods and services to be acquired locally. In the context of Infrastructure Fund funded projects, the Infrastructure Fund Administration Manual, November 2020 ("IF Manual"), Table 14, p.51 refers to project appraisal evaluation criteria including social and environmental impact of the proposed project. However, these measures are piecemeal and not part of a wider sustainable public procurement strategy.</p> <p>PPL 2022: A.47(6) PPL 2022 Specifications references environmental, social and economic issues to be considered in specifications for works contracts. A.63 PPS 2022 includes in non-price factors for evaluation accessibility, design for all users, social, environmental and innovative characteristics and supply conditions; and environmental of social sustainability of the way in which the contract is performed. These provisions are limited and do not address the full procurement cycle.</p>				sustainability considerations into all stages of the procurement cycle together with capacity building to ensure appropriate and effective application and use in practice ⁸¹

⁸¹ See, for example, Sustainable Public Procurement, Guidance Note on Procurement, Asian Development Bank, December 2021 <https://www.adb.org/documents/sustainable-public-procurement>
Sustainable Procurement, Environmental and Social Standards Enhancement Project (SPESSE), World Bank <https://projects.worldbank.org/en/projects-operations/project-procurement/P169405>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(d) The legal provisions require a well-balanced application of sustainability criteria to ensure value for money.</p>	<p><i>Summary: PPL 2005 provides for use of price and non-price attributes and life cycle costing in evaluation, but the measures are limited and do not fully address all aspects of sustainability (economic, environmental and social) in sufficient detail to ensure balanced application of sustainability criteria and ensure value for money. PPL 2022 widens the description of non-price factors for evaluation to include accessibility, design for all users, social, environmental and innovative characteristics and supply conditions; and environmental of social sustainability of the way in which the contract is performed.</i></p> <p>Use of price and non-price attributes and consideration of life-cycle cost in evaluation</p> <p>A.86(1) PPL 2005 provides that the main objective in tendering procedures is the selection of goods, services and works with the best quality/price ratio where the purchase price is only one of the criteria.</p> <p>A.86(2) PPL 2005 requires evaluation to take into account cost/benefit analysis on a life-cycle basis.</p> <p>A.86(6) PPL 2005 requires financial analysis for the entire life cycle of the subject matter of the procurement and refers specifically to avoiding cheaper produces or services with inferior quality that might cost more in the long term due to maintenance costs.</p> <p>PPL 2022: A.63 PPL 2022 provides that as a general rule the award criterion must be “best value for money” taking into account a range of factors. A.64(3) PPL 2022 Factors and subfactors, provides that factors and possible subfactors in evaluation may include: Quality – including accessibility, design for all users, social, environmental and innovative characteristics and supply conditions; and environmental of social sustainability of the way in which the contract is performed. A.62(5) PPL 2022 Evaluation provides that evaluation should [take into account possible benefits</p>		<p>Criterion not met</p> <p>Sub-indicator 3(a)(d) Sustainability criteria</p> <p>PPL 2005 does not fully address all aspects of sustainability (economic, environmental and social) in sufficient detail to ensure balanced application of sustainability criteria and ensure value for money.</p>		See recommendation at 3(a)c) above.

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	including lifetime costs [lifecycle costs], the performance of the contract including maintenance, externalities, economic risks, the objectives of the contract and satisfaction of needs and public interest. Further detail and guidance as well as training and support (capacity building) will be required to ensure that application of sustainability criteria is applied in a well-balanced manner to ensure value for money.				

3(b) Obligations deriving from international agreements

Public procurement-related obligations deriving from binding international agreements are:

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(a) clearly established	<p><i>Summary: Timor-Leste is not currently a party to regional or bilateral free trade agreements and so there are no public procurement specific obligations deriving from those sources. There is no evidence of noncompliance and thus the criterion is considered met.</i></p> <p>Free Trade Agreements Timor-Leste is not currently a party to regional or bilateral free trade agreements.⁸² Timor-Leste has ASEAN observer status since 2002 and applied for membership in March 2011 but the application is still being considered. Timor-Leste submitted its application for accession to the World Trade Organisation in November 2016⁸³, but has not yet acceded.</p> <p>S.9(2) of the Constitution provides that rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of Timor-Leste following</p>		Criterion met		

⁸² ADB Asia Integration Center, FTA online database, accessed 14 January 2022. <https://aric.adb.org/fta-country>

⁸³ <https://accessions.wto.org/acc/tls>, accessed 14 January 2022

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>their approval, ratification or accession by the respective competent organs and after publication in the Official Journal. Section 9(3) of the Constitution provides that all rules that are contrary to provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid.</p> <p>A.12 PPL 2005 provides for the principle of compatibility with international rules and confirms that the PPL 2005 shall not apply where it contradicts an international legal obligation undertaken by the Democratic Republic of East Timor (RDTL) by virtue of a treaty or other form of international agreement which the RDTL has entered together with one or more countries and an agreement between the RDTL and an international funding institution.</p> <p>PPL 2022: A.3(1) PPL 2022 Excluded contracts, includes in the list of contracts excluded from application of PPL 2022 agreements concluded with third states, government organizations of third states, international organizations and international financial institutions. A.3(2) PPL 2022 confirms that PPL 2022 shall not apply to contracts arising from such agreements when the exclusion of the PPL 2022 is provided for in such contracts. It does not specifically reference incompatibility with Treaties.</p> <p>International Labor Organization Timor-Leste has ratified the following ILO Conventions⁸⁴: Forced labor conventions, 1930; Freedom of Association and Protection of Right to Organize Convention, 1948; Right to Organize and Collective Bargaining Convention, 1949; Equal Remuneration Convention, 1951; Discrimination</p>				

⁸⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103251
accessed 16 February 2022.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p>(Employment and Occupation) Convention, 1958; Worst Forms of Child Labor Convention, 1999.</p> <p>UN conventions</p> <p>Timor-Leste has acceded to the following conventions⁸⁵ : Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights & Second Optional Protocol aiming to the abolition of the death penalty, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Convention on the Rights of the Child & Optional Protocols on the involvement of children in armed conflict and on the sale of children child prostitution and child pornography.</p>				
(b) consistently adopted in laws and regulations and reflected in procurement policies.	See 3(b)(a)		Criterion met		

⁸⁵ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=174&Lang=EN, accessed 14 January 2022

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Pillar II. Institutional Framework and Management Capacity

4. The public procurement system is mainstreamed and well-integrated into the public financial management system.

4(a) Procurement planning and the budget cycle

The legal and regulatory framework, financial procedures and systems provide for the following:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Annual or multi-annual procurement plans are prepared, to facilitate the budget planning and formulation process and to contribute to multi-year planning.	<p><i>Summary: The normative framework on planning, budgeting, monitoring and evaluation identifies the need to prepare the procurement plans to inform budget preparation however the procurement regulatory framework is silent on this aspect.</i></p> <p>Decree Law No.22 of 2015 on planning, budgeting, monitoring and evaluation ("DL 22/2015")⁸⁶ underscores the need to consider procurement in the upstream review of budget preparation by identifying where the project is in the procurement cycle and requires that the budget plan, once formulated, be accompanied by a procurement plan. Non submittal of the plan is a cause of rejecting the proposal and returning it to the agency to address the omission. "Budget submissions that do not contain the plan annual budget, procurement plan and budget duly justified, are rejected and must be submitted within a maximum period of 5 working days."</p> <p>This aspect is not addressed in the specific procurement regulations, guidance. Currently, the PPL 2005 mentions the procurement plan only in the context of records to be maintained by the procuring units. PPL 2022, A 67, while it elaborates more on the procurement plan does not emphasize the procurement role in budget planning. The Best</p>		<p>Criterion partially met</p> <p>While the budget legislation requires that procurement be considered in the budget planning and preparation, PPL 2005, Best Practice Guide and infrastructure manual are silent on this particular aspect of procurement planning.</p>		<p>Include these requirements in the procurement guidelines, instructions, training to ensure that procurement practitioners effectively contribute to meeting this objective. More clarity is needed on how the procurement planning will be addressed with the institutional changes recently effected.</p>

⁸⁶ Decree Law No.22 of 2015 On planning, budgeting, monitoring and evaluation [Sobre Planeamento, Orçamentação, Monitorização e Avaliação]. *Jornal da República* https://mj.gov.tl/jornal/public/docs/2015/serie_1/SERIE_I_NO_25.pdf

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	<p>Practice Guide 1 to Procurement Planning defines the procedures to be used by all government agencies with no linkage to the budget preparation. Finally, the Infrastructure Fund Manual – that covers a significant part of capital procurement - includes procurement requirements in the implementation phase but not in the planning/budgeting phase.</p> <p>Relevant provisions in the regulatory framework: A.4(6) DL 22/2015 provides that the body responsible for planning and strategic investment, in relation to special funds, prepares plans and information regarding budget submission by project and considering the status of the project in the procurement cycle and the progress of implementation of signed contracts, sending the information to the Ministry Finance and UPMA (Planning, monitoring and assessment unit / <i>Unidade de Planeamento, Monitorização e Avaliação</i>), for the calculation of the fiscal envelope and the expenditure ceilings. A.9(4) DL 22/2015 provides that Budget submission that does not contain the annual procurement plan and an appropriately justified budget proposal will be rejected and must be resubmitted in the next 5 days.</p> <p>UPMA has been reformed and replaced by the National Agency for Planning, Monitoring and Evaluation, <i>Agência Nacional de Planeamento, Monitorização e Avaliação</i>, (ANAPMA) that was created in 2021 ⁸⁷ with the mission to provide technical and administrative support to the Prime Minister in the exercise of his competences in terms of institutional strengthening of the State and coordination of the actions of the various members of the Government, namely for the implementation of the objectives and goals</p>				

⁸⁷ ANAPMA established by Decree Law No.24 of 2021 National Agency for Planning, Monitoring and Evaluation [*Agência Nacional de Planeamento, Monitorização e Avaliação*]. *Jornal da República* https://mj.gov.tl/jornal/public/docs/2021/serie_1/SERIE_I_NO_46.pdf

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	foreseen in the Government Program. Under the new setting it should be clarified how the procurement planning will be addressed.				
(b) Budget funds are committed or appropriated in a timely manner and cover the full amount of the contract (or at least the amount necessary to cover the portion of the contract performed within the budget period).	<p><i>Summary: The commitment control is enforced at the time of contract signature when a Commitment and Payment Voucher (CPV), "Formulario de compromisso de pagamento (FCP)" is issued to be approved by the public institution's authorizing officer (or her/his delegate), and then recorded into the GRP FreeBalance system which records all transactions from commitment to payment and prevents expenditure from exceeding available balances.</i></p> <p>According to A. 22 of the annual Government Decrees on budget execution (e.g., Government decree 1/2021, 13/2022),⁸⁸ contracts cannot be signed without corresponding budget availability and the Commitment and Payment Voucher (FCP) ensures that funds are set aside to meet the commitment undertaken. The FCP identifies the activity, consistent with the annual plan and budget programs, and the amount of expenditure to be incurred, and presents a detailed description of the expense, namely the detailed technical specification of the goods, services or works. It is not allowed to split an expense into multiple FCPs in order to circumvent the rules on expense authorization. With the improvements in the system to ensure monitoring and controls at the item level (not only category level), but commitment controls are also further strengthened.</p>		Criterion met		
(c) A feedback mechanism reporting on budget execution is in place, in particular regarding the	<p><i>Summary: There is a feedback mechanism on budget execution however it is mostly on financial execution of civil works contracts and is not publicized by contract (financial and</i></p>		<p>Criterion partially met</p> <p>The reporting on the contracts' implementation, as published, does not include physical progress</p>		Ensure consistent monitoring of the physical progress of the major contracts and

⁸⁸ Government Decrees 1/2021 and 13/2022 on budget execution. Jornal da República <https://mj.gov.tl/jornal/?q=node/18>

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completion of major contracts.	<p><i>physical progress</i>) on the Government portal as required under the Government regulations.</p> <p>Contract monitoring data is key information to demonstrate the effective budget financial and physical execution by (major) contracts and by publicizing it, it is enabling broad access by stakeholders for monitoring.</p> <p>According to the Government Decree on budget execution 13/2022 (A.9) the agencies of the central administration have to report monthly, until the 15th of each month following the end of the quarter to Treasury (DGT) all contracts of execution of public works concluded in the previous quarter, as well as the physical progress reports of works relating to all works in progress or completed in the previous quarter and the projects financed by public transfers, for publication on the procurement portal and in the results portal of the government. The template VIII includes information related to the contract, procurement category, date of signature, location, value, start date, completion date, progress, payment to date.</p> <p>The information is not accessible on the procurement portal and the Government results portal website where contract progress is published seems outdated (2012). http://governmentresults.gov.tl/publicResults/summary Aggregate information on budget execution is published in the Budget portal. Civil works projects' financial progress under the Infrastructure Fund is published in the Budget book; there is no similar reporting on the physical execution though.</p>		and the results portal where financial / physical progress is displayed is not updated.		publish the contract implementation information in the Government portal by (major) contract and provide up to date physical progress in the results portal.

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4(b) Financial procedures and the procurement cycle

The legal and regulatory framework, financial procedures and systems should ensure that:

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(a) No solicitation of tenders/proposals takes place without certification of the availability of funds.	<p><i>Summary: There are strict requirements for the procurement process to be approved provided that the related expenditure has been also approved and this is generally enforced.</i></p> <p>Government Decrees on budget execution 13/2022 A. 20 of the Government Decree for budget execution 13/2022 states that any expenditure (<i>Despesa</i>) needs to be approved by the competent authority and if the expenditure is for a procurement activity the two authorizations (for the expenditures and commencement of procurement (<i>autorizar despesa e procedimentos de aprovisionamento</i>) can be obtained simultaneously if they are provided by the same body. It is further stated that the start of the procurement process shall be dependent on the authorization of the respective expenditure.</p>		Criterion met.		
<p>(b) The national regulations/procedures for processing of invoices and authorization of payments are followed, publicly available and clear to potential bidders. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 4(b) Assessment criterion</p>	<p><i>Summary: national payment regulations are well codified and enforced through the GRP systems. Their authorization has been gradually delegated to ministries and municipalities. However, the time to process payment from the moment the invoice is submitted is generally lengthy, among others, because of the long time needed to certify the payment requests. This is significantly impacted by the absence of regular supervision of the implementation of public works contracts.</i></p> <p>National regulations/payment procedures: As confirmed by PEFA 2018, payment rules and procedures are detailed in the Treasury Manual and complemented with specific instructions in the Government Decrees for Budget Execution (e.g., Decree 1/2021, Decree 13/2022). Additional SOPs, including flowcharts, have been prepared by MoF (e.g., SOP for payment processing for line ministries and for</p>	<p><i>Minimum quantitative indicator:</i> - invoices for procurement of goods, works and services paid on time (in % of total number of invoices).</p> <p>There are no national consolidated statistics on the length of the payment process. The invoice tracking module of the GRP system has been launched only recently, in April 2022.</p> <p>MAPS survey indicates that payments are typically delayed by</p>	<p>Criterion partially met</p> <p>While there are payment regulation and the payment authorizations have been increasingly decentralized there are delays in payments that are generally caused by delays in the certification process of the works to be paid.</p>		Strengthen regular supervision to accelerate the certification of the payment requests based on the physical progress and speed up the payment process.

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(b): - invoices for procurement of goods, works and services paid on time (in % of total number of invoices). Source: PFM systems.	<p>autonomous agencies). Payment rules and procedures are enforced through the GRP system. The internal controls/chain of authorization for payments (approval of expense voucher) has been gradually delegated over the last years to the ministry level and municipalities) – MOF Treasury does only the payment, except for autonomous funds such as the Infrastructure Fund that have their own treasury.</p> <p>Regarding the time to process payments, interviews with procuring entities as well as the private sector survey revealed that those delays are not unusual under government contracts, and they are mainly caused by the certification process of the works/deliveries claimed and inefficiencies in the chain of payment approval. ADN is in charge of checking the payment request relative to the works progress – and on this basis ADN verifies, certifies and recommends payment. This system normally applies to all physical projects implemented by the Government until the project is finalized.</p> <p>The ADB Construction market analysis of Dec. 2019 mentions that based on the construction firms feedback the delays in payment of construction contracts is a major impediment. Such delays could go from 3 months up to a year in certain cases. It takes the government a significant amount of time in processing the payments. This is particularly significant considering the fact that the normal government budget runs in a calendar year.</p>	<p>more than one month beyond the contractual provisions.</p>			

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5. The country has an institution in charge of the normative/regulatory function.

5(a) Status and legal basis of the normative/regulatory institution function

The legal and regulatory framework, financial procedures and systems provide for the following:

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(a) The legal and regulatory framework specifies the normative/regulatory function and assigns appropriate authorities' formal powers to enable the institution to function effectively, or the normative/regulatory functions are clearly assigned to various units within the government.	<i>Summary: The Minister of Finance holds the normative/regulatory competences for public procurement pursuant to the Ministry of Finance Organic Law ("MoF Organic Law"). PPL 2005 includes a list of the procurement related competences of the MoF. According to the PPL 2005 the "Procurement Service", a department of the MoF, is charged with coordination of procurement regulated by PPL 2005 and is assigned a list of competences and responsibilities. In practice, there is no "Procurement Service" department in the MoF. The "Procurement Service" competences and responsibilities are discharged by various units/departments/offices in the MoF administrative structure including the National Procurement Commission- "Comissão Nacional de Aproveitamento" (CNA), with the National Development Agency - Agência de Desenvolvimento Nacional (ADN) also fulfilling a role in normative/regulatory matters for major projects. Overall, the assignment and execution of the various normative/regulatory functions is disparate, creating potential overlaps, and there is a lack of a central coordinating mechanism. PPL 2022 partially addresses this issue by adding to the list of normative/regulatory tasks falling within the remit of the CNA, thus creating a stronger centralized procurement lead, but for specified functions only.</i>		Criterion not met The normative/regulatory functions (competences) are assigned to MoF, but the MoF "Procurement Service" (Serviço de Aproveitamento) department envisaged in PPL 2005 to discharge normative/regulatory functions and fulfil a central coordinated role is not established. The "Procurement Service" competences and responsibilities are discharged by various units/departments/offices in the MoF administrative structure, with the National Development Agency (ADN) also fulfilling a role in normative/regulatory matters for major projects. Overall, the assignment and execution of the various normative/regulatory functions is disparate, creating potential for overlaps, and there is a lack of a central coordinating mechanism.	Yes	The normative and regulatory functions could be more comprehensively and clearly described in the PPL, including how and what formal powers and authorities are assigned within MoF and to other units within the government for their effective implementation. It is good practice that the functions are consolidated and, if assigned to various entities their role should be clearly described, to avoid overlap, and a coordination

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	<p>Ministry of Finance⁸⁹</p> <p>A. 2(1) Ministry of Finance Organic Law⁹⁰ ("MoF Organic Law") provides that the MoF is the government department responsible for design, implementation, coordination and evaluation of the policy defined and approved by the Council of Ministers in the areas of annual planning and monitoring of the budget and public finances.</p> <p>A.2(2)(b) MoF Organic Law provides that it is the responsibility of the MoF to (in summary) to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management; carry out high value procurement procedures as defined by law and provide technical support and advice on lower value procurement procedures; ensure the supply of goods procured for all Ministries; prepare and publish official statistics; develop financial management information systems in all public administration services and bodies, in the context of the development of e-government.</p> <p>A.16 PPL 2005 lists the competences (<i>competências</i>) of the Minister of Finance relating to public procurement as follows (in summary):</p> <ul style="list-style-type: none"> • execute Government's procurement policy and submit procurement policy related proposals to the Government. • submit to the Government proposals to ensure compliance with general procurement principles and fulfilment of State needs. 		<p><i>This gap is allocated a red flag because it relates to organizational issues which extend beyond the Ministry of Finance and cannot be remedied simply by changes in the PPL 2022.</i></p>		<p>mechanism should be set on place. The government may consider the experience of other countries such as: Mauritius, Seychelles and Cape Verde.</p>

⁸⁹ PPL 2005 refers to the "Minister of Planning and Finance" and "Ministry of Planning and Finance", but in this context the terms "Ministry of Finance", Minister of Finance" or "MoF" are used, for simplicity.

⁹⁰ MoF Organic Law: Decree Law No.28 of 2019 Ministry of Finance Organic Law [Orgânica do Ministério das Finanças]. Jornal da República https://mj.gov.tl/jornal/public/docs/2019/serie_1/SERIE_I_NO_38.pdf, as amended by Decree Law No.43 of 2020. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_41.pdf

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	<ul style="list-style-type: none"> submit reports to the Government on the execution [implementation] of procurement policies and make proposals for corrective measures. provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL. analyse and decide on operations assigned to the MoF by the PPL and other Government provisions. analyse/monitor procurement procedures in order to ensure they are compliant with policies defined by Government. undertake other competences assigned by government or law. <p>Procurement Service: A.17 PPL 2015 lists the competences (<i>competências</i>) of the Procurement Service (<i>Serviço de Aproveitamento</i>), a department of the MoF, as follows (in summary):</p> <ul style="list-style-type: none"> give advice to the MoF on the global policy relating to procurement. take part in those activities in regard to the execution of Government's policy concerning procurement. organize, direct, control and manage procurement operations in accordance with the PPL 2005 and complementary rules. advise the MoF on the methodological parameters, the procurement instructions and the procedures handbooks which can be useful to help implement the present decree-law. oversee the execution of the policy regarding procurement planning, competition procedures, logistics and supply administration in general. carry out the revision, purchase and management operations which the present statute has assigned to it. keep for 5 (five) years the documentation related to procurement operations. 				

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	<ul style="list-style-type: none"> promote periodic appointments and meetings together with other public administration services and other services allowed undertaking a decentralized procurement, in order to improve the compliance with the existing policies and regulations as to procurement. ensure specialized training for the personnel working in the procurement field. carry out procurement management whenever the PPL 2005 provides for such competence or as expressly delegated in writing by MoF. propose the application of administrative sanctions over all infringements of the rules related to the present legal regime, in accordance with the procedures set by law. carry out other competences assigned to it by PPL 2005 and applicable regulations. <p>A.18 PPL 2005 sets out responsibilities (<i>responsabilidades</i>) allocated to the Procurement Service, which are to:</p> <ul style="list-style-type: none"> carry out procurement on behalf of public services in specified cases, being (in summary): high value procurement; or where expressly requested by a head of a public service; or, the procuring entity is a state organ that does not have the necessary administrative and financial skills/capacity [competence] to conduct its own procurement; or any other state institution. give methodological supervision to the entities which undertake procurement operations. assist the Public Services on the state of execution of the financial resources received for their centralized procurement operations. draw up and to keep updated records and accounts which can faithfully show the undertaken economic facts. draw up financial information and reports which can faithfully show the operations, resources and expenses 				

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	<p>related to the procurement activity and to submit them to top levels on the set dates.</p> <ul style="list-style-type: none"> ensure an adequate price-quality relationship as for the goods, works and services which make the object of procurement. <p>in practice, however, there is no “Procurement Service” department within the MoF fulfilling the competences and responsibilities envisaged in PPL 2005. Procurement related competences and responsibilities are carried by various units/departments/offices in the MoF administrative structure, in particular, the National Procurement Commission (CNA) and the autonomous National Development Agency (see below). In practice, normative/regulatory procurement roles and activities are scattered across the MoF and there is no central coordinating mechanism.</p> <p>National Procurement Commission (<i>Comissão Nacional de Aprovisionamento</i>) (CNA): MoF Organic Law A.42 A(1) provides that the National Procurement Commission (CNA), a direct state administration within the Ministry of Finance, is responsible for carrying out procurement processes for projects of high value, as well as monitoring and assisting technically the other procedures carried out within the scope of all public entities. A.3 Decree Law No.14 of 2011 (“DL 14/2011”)⁹¹ establishing CNA, provides that the functions of the CNA are to undertake procurement processes for projects involving amounts equal to or higher than USD 1 million; provide technical and advisory support for procurement procedures up to USD 1 million; collaborate with ADN, Major Projects Secretariat, ministries and other entities, and fulfil any other functions assigned to it by law.</p>				

⁹¹ Decree Law No.14 of 2011 Establishing the National Procurement Commission [*Estabelece a Comissão Nacional de Aprovisionamento*]. *Jornal da República* https://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no12.pdf 2

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	<p>A.24 PPL 2022 lists functions of CNA and it also amends DL 14/2011 to align the CNA functions with those set out in PPL 2022. PPL 2022 adds to the list of normative/regulatory tasks falling within the remit of the CNA, thus creating a stronger centralized procurement lead for specified functions. The additional tasks are to:</p> <ul style="list-style-type: none"> • issue opinions and recommendations and develop templates and forms for standardisation of procedures. • create and maintain databases of interested parties, candidates, competitors, contractors and private contractors registering their qualifications, as well as the fines and ancillary penalties imposed under the administrative sanctions regime [<i>regime contraordenacional</i>] provided for in the PPL 2022. • promote the training of human resources in the area of supply. • instruct the proceedings under the administrative sanctions' regime provided for in the PPL 2022 and impose fines and ancillary penalties. <p>MoF Directorates: MoF Organic Law identifies a number of other MoF Directorates and Offices with procurement or PPP related functions, including: A.8 National Directorate of Public-Private Partnerships (<i>Direção Nacional de Parcerias Público-Privadas</i> (DNPPP)); A.12 National Directorate of Planning (<i>Direção Nacional do Planeamento</i>); A.32 National Directorate of Supply (responsible for MoF related procurement matters) (<i>Direção Nacional de Aproveitamento</i>); A.33 National Directorate of Contract Administration and Management (<i>Direção Nacional de Administração e Gestão de Contrato</i>); A.37 Office of Reform Policy and Capacity Building in Public Finance Management</p>				

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	<p>(<i>Unidade de Política de Reforma e Capacitação em Gestões das Finanças Públicas</i>). This list is not exhaustive.</p> <p>National Development Agency (<i>Agência de Desenvolvimento Nacional</i>) (ADN)</p> <p>The ADN was set up in 2011 established by Decree Law No.11 of 2011 (“DL 11/2011”) ⁹² as part of the direct state administration, to develop competences related to capital development projects and has been active since then. Decree Law No.60 of 2020 (“DL 60/2020”) ⁹³ established ADN as an autonomous public institute, with legal personality. A.4(1) DL 60/2020 provides that ADN is responsible for designing, coordinating, executing and evaluating the policy defined and approved by the Council of Ministers with regard to the evaluation, management, monitoring and supervision of development capital projects and lists functions assigned to ADN in order to fulfil its mission, including validation of works, preparation of standards and norms for construction project, training and capacity building, technical and scientific cooperation.</p> <p>PPP: The MoF National Directorate of Public-Private Partnerships (<i>Direção Nacional de Parcerias Público-Privadas</i>) (DNPPP) (formerly the UPPP) has primary responsibility for developing policies and supporting the implementation of PPPs. The UPPP provides technical support to CAFI (Council for Administration of Infrastructure Fund) through the Secretariat of Major Projects. (See sub-indicator 1(l)(c)).</p>				

⁹² Decree Law No.11 of 2011 National Development Agency [*Agência de Desenvolvimento*]. *Jornal da República* http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no11.pdf

⁹³ Decree Law No.60 of 2020 Statute of the National Development Agency [*Estatuto da Agência de Desenvolvimento Nacional*]. *Jornal da República* https://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_48.pdf

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5(b) Responsibilities of the normative/regulatory function

The following functions are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility:

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(a) providing advice to procuring entities	<p><i>Summary: PPL 2005 assigns the function (competence) of providing advice to procuring entities to the "Procurement Service" (Serviço de Aproveitamento), a department of the MoF. MoF does not have a Procurement Service department. According to the MoF Organic law, the National Procurement Commission (CNA) which is part of MoF has responsibility for providing technical assistance on procurement procedures of a value below USD 1 million carried out by all public entities. The National Development Agency (ADN) has also a role in providing technical input in specified areas of expertise.</i></p> <p>A.18 PPL 2005 sets out obligation applying to the Procurement Service (Serviço de Aproveitamento), including to: provide methodological supervision to the entities which undertake procurement operations; assist procuring entities on state of execution of financial resources received for centralized procurement operations; prepare and keep accurate records and accounts; prepare and file financial information and reports on procurement operations, resources and expenditure; ensure adequate price/quality in procurement of goods, works and services. MoF does not have a Procurement Service department.</p> <p>MoF Organic Law A.42 A(1) provides that the National Procurement Commission (CNA) is the central services of the Ministry of Finance responsible for monitoring and assisting technically on procedures of a value below USD 1 million carried out within the scope of all public entities.</p>		<p>Criterion partially met</p> <p>The function of providing advice to procuring entities is clearly assigned by PPL 2005 to the 'Procurement Service', a department of the MoF, but the MoF has not established a 'Procurement Service' department. In practice and according to MoF Organic law, aspects of this function are discharged by the National Procurement Commission (CNA), part of the MoF state administration. The National Development Agency (ADN) also has a role in providing technical advice in specified areas of expertise. Discharge of allocated functions is thus not in accordance with PPL 2005 and responsibility is split. It is not clear whether the advisory functions discharged by CNA apply only to provision of advice on particular procurements or whether the intention is to cover advice to procuring entities</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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	<p>The National Development Agency (<i>Agencia de Desenvolvimento Nacional</i>) (ADN) is responsible for designing, coordinating, executing and evaluating the policy defined and approved by the Council of Ministers with regard to the evaluation, management, monitoring and supervision of development capital projects and functions assigned to ADN in order to fulfil its mission, include validation of works, preparation of standards and norms for construction project, training and capacity building, technical and scientific cooperation.</p> <p>PPL 2022 retains the role of the CNA “provide support in carrying out procurement procedures of less than USD 1 mil. when requested by the contracting authority and manage the procurement process on their behalf”, in addition to other roles of CNA with respect to conduct of procurement processes for higher value contracts.</p>		of a more general nature on public procurement related issues.		
(b) drafting procurement policies	<p><i>Summary: PPL 2005 assigns to the Minister of Finance, the competence to submit procurement policy related proposals to the Government. MoF Organic Law assigns the function of drafting procurement policies to the MoF. Within the MoF, this function is assigned in practice to the Legal Support Office. MoF Organic Law assigns the responsibility to update and improve policy and procedures including in the area of procurement to the MoF Office for Policy, Reforms and Capacity Building in Public Financial Management.</i></p> <p>A.16 PPL 2005 assigns to the Minister of Finance the competence to execute Government’s procurement policy and submit procurement policy related proposals to the Government.</p> <p>A.17 PPL 2005 assigns competences to the Procurement Service, a department of the MoF, including: to give advice to the Minister of Finance on global policy relating to</p>		<p>Criterion partially met</p> <p>The function of drafting procurement policies is assigned to MoF and in practice it is the MoF’s Legal Support Office which is in charge. The legal and regulatory framework contains references to other units that might play a role in this area, which creates ambiguity.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units’ roles should be clearly described to avoid overlap and a coordination</p>

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	<p>procurement; take part in activities regarding execution of the Government's procurement policy: oversee the execution of policy regarding procurement planning, competition procedures, logistical and supply administration in general; advise the Minister [of Finance] on global policy concerning public contracts. MoF does not have a Procurement Service department.</p> <p>A.13 Public Contracts Law assigns advisory/recommendation powers to the Contracts Committee, including recommending: (d) procurement policies to be adopted by all public authorities.</p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management.</p> <p>A. 40 MoF Organic Law provides that the Legal Support Office <i>Office [Gabinete de Apoio Jurídico]</i> (GAJ) is the MoF 's central service responsible for developing and seeking approval on proposals for legal and public regulations and proceeding with its dissemination once approved</p> <p>A. 37 MoF Organic Law provides that tasks of the Office for Policy, Reforms and Capacity Building in Public Financial Management <i>[Gabinete de Política de Reforma e Capacitação em Gestão das Finanças Públicas]</i> (CPRCGFP) include to update and improve policy and procedures on taxation, budgeting and financial management, procurement, accounting and control and auditing, in collaboration with the other relevant services.</p> <p>PPL 2022 does not refer to the function of drafting procurement policies.</p>				mechanism should be set in place.
(c) proposing changes/drafting amendments to the	<i>Summary: The MoF Organic Law provides that it is the responsibility of the Minister of Finance to propose the necessary projects of regulation in a number of listed areas</i>		Criterion partially met		The regulatory framework should describe

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legal and regulatory framework	<p><i>including procurement and PPL 2005 gives the Minister of Finance the competence to provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL. The MoF Office of Reform Policy and Capacity Building in PFM is also assigned a role in updating and improving procurement policy and procedures.</i></p> <p>A.2(2) MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management.</p> <p>A.16 PPL 2005 assigns to the Minister of Finance the competence to provide ministerial regulations, instructions and administrative acts necessary for implementing the PPL.</p> <p>A. 37 MoF Organic Law provides that tasks of the Office for Policy, Reforms and Capacity Building in Public Financial Management (<i>Gabinete de Política de Reforma e Capacitação em Gestão das Finanças Públicas</i>) (CPRCGFP) include update and improve policy and procedures on taxation, budgeting and financial management, procurement, accounting and control and auditing, in collaboration with the other relevant services.</p> <p>PPL 2022 does not refer to the function of proposing changes/drafting amendments to the legal and regulatory framework.</p>		The function of proposing changes/drafting amendments to the legal and regulatory framework is assigned to the MoF but it is not entirely clear what is the division of responsibilities between the units to which it is allocated, and which is the lead/coordinating unit.		this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.
(d) monitoring public procurement	<p><i>PPL 2005 assigns to the Minister of Finance, the competence to monitor procurement procedures to ensure they are compliant with policies defined by Government. PPL 2005 is not clear whether monitoring is a competence assigned to the Procurement Service. The CNA which is part of MoF is, according to the MoF Organic law and the law establishing the CNA, assigned the task of monitoring procedures carried out by public entities but the extent of such monitoring and how it is done in practice it is not clear. Both the ADN and Major</i></p>		<p>Criterion not met</p> <p>The function of monitoring of public procurement function is not comprehensively and clearly described in the legal and regulatory framework, and there are multiple institutions involved,</p>		The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously.

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	<p><i>Projects Secretariat are also assigned monitoring roles in the areas of their focus.</i></p> <p>A.16 PPL 2005 assigns to the Minister of Finance the competence to monitor procurement procedures in order to ensure they are compliant with policies defined by Government.</p> <p>PPL 2005 is not clear whether the competence of monitoring is assigned to the Procurement Service and in any case, there is no Procurement Service department in the MoF.</p> <p>A.42A MoF Organic Law provides that the National Procurement Commission (CNA) is the central service of the Ministry of Finance responsible for monitoring and assisting technically the other procedures carried out within the scope of all public entities. It is not clear what is the full extent of the monitoring functions to be carried out by CNA and how such activities are to be conducted.</p> <p>Prior review functions for high value contracts are carried out by the <i>Camara de Contas</i>. Law No.9 of 2011 ("Law 9/2011" or "LOCC")⁹⁴ requires Prior control/review by the <i>Camara de Contas</i> of contracts above USD 5 million, including subsequent addenda, with the purpose of the review being to ascertain whether acts, contracts, or other instruments resulting in expenses or representing direct or indirect financial accountability are in compliance with the laws in force and whether such costs have been considered in budget funds.</p> <p>A.4(1) DL 60/2020 provides that ADN is responsible for designing, coordinating, executing and evaluating the policy defined and approved by the Council of Ministers with regard to the evaluation, management, monitoring and supervision of development capital projects and lists functions assigned to ADN in order to fulfil its mission.</p>		with potential overlapping functions.		If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.

⁹⁴ Law of National Parliament No.9 of 2011 Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court [Orgânica da Câmara de Contas do Tribunal Superior Administrativo, Fiscal e de Contas] (LOCC)]. Jornal da República http://www.mj.gov.tl/jornal/public/docs/2011/serie_1/serie1_no31.pdf

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	<p>Large contract monitoring is also assigned to Major Project Secretariat. The infrastructure manual provides for quarterly report on contract execution to SGP.</p> <p>A.183 PPL 2022 External control, refers to monitoring of procurement through external control by the Chamber of Auditors, Anti-Corruption Commission and Inspection, Control and Audit Services of the public administrative sector. PPL 2022 does not assign a general function of monitoring of public procurement to a central oversight body.</p>				
(e) providing procurement information	<p><i>Summary: PPL 2005 does not explicitly assign responsibility for providing general information on procurement for the benefit of stakeholders (such as public bodies, suppliers and CSOs) or to publish comprehensive annual reports on public procurement.</i></p> <p>PPL 2022 does not refer to the function of providing procurement information.</p>		<p>Criterion not met</p> <p>PPL 2005 does not explicitly describe or assign the function of providing general information on procurement for the benefit of stakeholders.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>
(f) managing statistical databases	<p><i>Summary: PPL 2005 assigns to the Procurement Service, a department of the MoF, the responsibilities to draw up and keep accurate records and accounts [of procurement activities] and to draw up financial information and reports</i></p>		<p>Criterion not met</p> <p>PPL 2005 does not explicitly describe or assign the function of</p>		<p>The regulatory framework should describe this function</p>

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	<p><i>which can faithfully show the operations, resources and expenses related to the procurement activity and to submit them to top levels. It is not entirely clear, however, whether these responsibilities are intended to apply only to procurement conducted by the Procurement Service or are intended to apply to all public procurement activity in Timor-Leste. In practice, there is no Procurement Service department within the MoF. According to the MoF Organic law, it is the responsibility of the MoF to publish official statistics. However, the legal framework does not identify a specific department in charge of this function to manage public procurement statistical databases. PPL 2022 assigns competence for management of statistical databases for specified activities to the CNA.</i></p> <p>A.18 PPL 2005 places responsibilities on the Procurement Service to: draw up and keep accurate records and accounts which can faithfully show the undertaken economic facts; draw up financial information and reports which can faithfully show the operations, resources and expenses related to the procurement activity and to submit them to top levels on the set dates.</p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to: propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management; prepare and publish official statistics.</p> <p>PPL 2022 assigns competences for management of statistical databases for specified activities to the CNA. A.22(e) PPL 2022 provides that the CNA shall create and maintain a list of data bases of interested parties, candidates, competitors, contractors and private contractors registering their qualifications, fines and sanctions applied under the sanction regime.</p>		<p>managing statistical databases. PPL 2005 does assign responsibilities for keeping of records and accounts to the Procurement Service, a department of the MoF, but the Procurement Service is not established and there is a lack of clarity as to the precise nature of the responsibilities described.</p>		<p>more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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(g) preparing reports on procurement to other parts of government	<p><i>Summary: PPL 2005 assigns to the Minister of Finance, the competence to submit reports to the Government on the execution [implementation] of procurement policies and make proposals for corrective measures. PPL 2005 places responsibilities on the Procurement Service, a department of the MoF, to draw up financial information and reports for submission to superiors. There is no Procurement Service department within the MoF. The Director of the CNA is responsible for preparing and submitting reports of activities to superior, but their scope is not clear.</i></p> <p>A.16 PPL 2005 assigns the competence to the Minister of Finance to submit reports to the Government on the execution [implementation] of procurement policies and make proposals for corrective measures</p> <p>A.18 PPL 2005 places responsibility on the Procurement Service to draw up financial information and reports which can faithfully show the operations, resources and expenses related to the procurement activity and to submit them to top levels on the set dates.</p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to prepare and publish official statistics.</p> <p>DL 14/2011 provides that CNA director is responsible to prepare and submit the reports of activities for appreciation by their superiors.</p> <p>PPL 2022 does not refer to the function of preparing reports on procurement for provision to other parts of government.</p>		<p>Criterion not met.</p> <p>The function of preparing reports on procurement to other parts of government is assigned by PPL 2005 to the Procurement Service, a department of the MoF, but the MoF has not established a Procurement Service department and it is not clear which department within MoF is in charge of this function in practice. The director of the CNA is also responsible for preparing and submitting reports on activities to their superiors but it is not entirely clear whether this covers the general MoF reporting function or whether it is more specific.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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<p>(h) developing and supporting implementation of initiatives for improvements of the public procurement system</p>	<p><i>Summary: PPL 2005 assigns to the Minister of Finance the powers to submit reports to Government and make proposals for corrective measure on the implementation of procurement policies as well as the power to monitor procurement procedures in order to ensure compliance with policies. PPL 2005 assigns to the Procurement Service, a department within the MoF, competence to advise and assist the Minister of Finance on matters concerning implementation. There is no Procurement Service department within the MoF. According to the MoF Organic law, it is the responsibility of the MoF to propose the necessary projects of regulation of procurement and the Office for Policy, Reforms and Capacity Building in Public Financial Management has the function to update and improve procurement.</i></p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management.</p> <p>A.16 PPL 2005 assigns to the Minister of Finance competences to: submit to the Government proposals to ensure compliance with general procurement principles and fulfilment of State needs; submit reports to the Government on the execution [implementation] of procurement policies and make proposals for corrective measures; monitor procurement procedures in order to ensure they are compliant with policies defined by Government.</p> <p>A.17 PPL 2005 assigns competences to the Procurement Service to advise the Minister of Finance on methodological parameters, procurement procedures and prepare procedures handbook to assist implementation of the PPL; promote regular appointments and meetings with other public administration services undertaking decentralized procurement in order to improve compliance with procurement policy and regulations.</p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management.</p>		<p>Criterion not met</p> <p>The function of developing and supporting implementation of initiatives for improvements in the public procurement system is assigned by PPL 2005 to the Minister of Finance and the Procurement Service, a department of the MoF, but the MoF has not established a Procurement Service department. According to the MoF Organic law the Office for Policy, Reforms and Capacity Building in Public Financial Management has the function to update and improve procurement, but it is not entirely clear which department within MoF is in charge of this function in practice.</p>	<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>
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	<p>A.37 MoF Organic Law provides that the Office for Policy Reforms and Capacity Building in Public Financial Management has the function among others, to update and improve the tax policy and procedures, budgeting and financial management, procurement and public contracts, accounting and control and auditing, in collaboration with other relevant services;</p> <p>A.40 MoF Organic Law provides that the Legal Support Office (<i>Gabinete de Apoyo Jurídico</i> (GAJ)) is the MF 's central service responsible for developing and seeking approval on proposals for legal and public regulations and proceeding with its dissemination once approved.</p> <p>PPL 2022 does not refer to the function of developing and supporting implementation of initiatives for improvements in the public procurement system.</p>				
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*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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(i) providing tools and documents, including integrity training programs, to support training and capacity development of the staff responsible for implementing procurement	<p><i>Summary: PPL 2005 assigns to the Procurement Service, a department within the MoF, competences to provide tools and documents and to provide and support training and capacity development of staff. There is no Procurement Service department within the MoF. In practice, CNA develops tools and documents for their own use that are disseminated to other agencies. Under PPL 2022 CNA is assigned functions to provide procurement related, tools, documents and training. According to the MoF Organic law, the Office for Policy, Reforms and Capacity Building in Public Financial Management has functions to identify needs and promote transparent and accountable public finance management practices through training programmes as well as developing accreditation programmes. Integrity training is a requirement of the Anti-corruption law which refers specifically to public procurement in this context.</i></p> <p>A.17 PPL 2005 assigns competences to the Procurement Service to: advise the Minister of Finance on methodological parameters, procurement procedures and prepare procedures handbook to assist implementation of the PPL; promote regular appointments and meetings with other public administration services undertaking decentralized procurement in order to improve compliance with procurement policy and regulations; ensure specialized training of personnel working in procurement.</p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management.</p> <p>A. 37 MoF Organic Law provides that the Office for Policy, Reforms and Capacity Building in Public Financial Management has the functions, among others, to assess and identify the needs of public finance management professionals in accordance with defined competence standards; promote transparent and accountable public</p>		<p>Criterion not met.</p> <p>The function of providing procurement tools, documents and procurement related training is clearly assigned by PPL 2005 to the Procurement Service, a department of the MoF, but the MoF has not established a Procurement Service department. Lead responsibility for preparation and delivery of training to support capacity development of procurement staff is unclear.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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	<p>finance management practices through training programs; develop accreditation frameworks for public finance management professionals in Timor-Leste.</p> <p>A.3 Law of National Parliament No.7 of 2020 Law on Measures to Prevent and Combat Corruption ("Anti-corruption law"/"Law 7/2020")⁹⁵ requires that appropriate procedures for the selection and training of people for public positions considered to be especially exposed to corruption are in place and, where appropriate, there is rotation in these positions. A7 Anti-corruption law provides that the training, with the respective certification of the acquired knowledge, of public agents assigned to procurement and public procurement services, must include a deep knowledge of the applicable legal techniques and rules, as well as awareness of the harmful effects of corruption and the benefits of appropriate ethical conduct.</p> <p>In practice, CNA develops tools and documents for their own use that are disseminated to other agencies. According to MoF, the legal support department may also have a role in this area.</p> <p>PPL 2022 assigns CNA with functions to provide procurement related, tools, documents and training. A.24 PPL 2022 assigns CNA with the following functions: issue recommendations and technical directives and develop templates and forms for standardization of procedures; and promote the training of human resources in the area of supply. The preamble to the PPL 2022 also speaks of: increasing the tasks of the CNA, in particular as to the standardization of procedures and the</p>				

⁹⁵ Law of National Parliament No.7 of 2020 on Measures to Prevent and Combat Corruption [Medidas de Prevenção e Combate à Corrupção]. Jornal da Republica https://mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_35.pdf

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	issuing of guidelines, model documents and templates among others.				
(j) supporting the professionalization of the procurement function (e.g., development of role descriptions, competency profiles and accreditation and certification schemes for the profession)	<p><i>Summary: PPL 2005 assigns to the Procurement Service, a department within the MoF, competences to promote regular meetings with public administration in order to improve compliance and to support training and capacity development of staff. There is no Procurement Service department within the MoF. According to the MoF Organic law, MoF, through its Office for Policy, Reforms and Capacity Building in Public Financial Management is in charge of training, accreditation and competency standards for the whole PFM sector. The public procurement legal framework focuses on training and does not address the professionalization of the procurement function. PPL 2022 identifies training among the functions of CNA but does not refer specifically to professionalization of procurement staff.</i></p> <p>A.17(PPL 2005 assigns competences to the Procurement Service to: promote regular appointments and meetings with other public administration services undertaking decentralized procurement in order to improve compliance with procurement policy and regulations; ensure specialized training of personnel working in procurement.</p> <p>Art 37 MoF Organic Law assigns to the Office for Policy, Reforms and Capacity Building in Public Financial Management roles to: develop, implement and evaluate training of MoF officials in the area of finance public authorities; assess and identify the needs of professionals management of public finances in accordance with the standards of competence that are defined; promote transparent and responsible public finance management practices through training programs, and; develop accreditation frameworks for public finance management professionals in Timor-Leste.</p>		<p>Criterion not met</p> <p>MoF Organic Law assigns the function of supporting professionalization for the entire PFM sector, but, other than reference to holding regular meetings with public administration, the PPLs are silent as to supporting professionalization, accreditation, certification, developing competency standards in procurement.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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	PPL 2022 identifies training among the functions of CNA but does not refer specifically to professionalization of procurement staff.				
(k) designing and managing centralized online platforms and other e-Procurement systems, as appropriate	<p><i>Summary:</i> <i>The MoF Organic Law provides that the MoF Office of Integrated Systems of Financial Management Information is the service responsible for the development of and management of an integrated management information system financial services in all services and bodies of the public administration. The Office for Policy, Reforms and Capacity Building in Public Financial is tasked under the MoF Organic Law with promoting transparency through the e-procurement portal and interconnection of procurement systems among various public agencies.</i></p> <p>A.2 MoF Organic Law provides that it is the responsibility of the MoF to propose the necessary projects of regulation in a number of listed areas including procurement, public finances and financial management; develop financial management information systems in all public administration services and bodies, in the context of the development of e-government.</p> <p>A 38 (1) MoF Organic Law provides that the Office of Integrated Systems of Financial Management Information [Gabinete de Sistemas Integrados de Informação de Gestão Financeira] (GSIIGF) is the central service of the MoF responsible for the development of and management of an integrated management information system financial services in all services and bodies of the public administration.</p> <p>A 37 MoF Organic Law assigns to the Office for Policy, Reforms and Capacity Building in Public Financial Management competences to: update and implement the financial management computer system and transparency standards in all public entities; further the electronic development of PFM and promote transparency through the Portal of Budget Transparency, the e-Procurement Portal, the Transparency</p>		<p>Criterion is not met</p> <p>it is not clearly defined in the PPL 2005 what department/office is in charge of developing and managing the e-procurement platforms. MoF Organic Law assigns relevant functions for developing the systems to the Office of Integrated Systems of Financial Management and to the Office for Policy, Reforms and Capacity Building in Public Financial Management but the division of responsibilities is not clear.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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	<p>Portal of Government Aid and results Portal; and interconnect the computer systems used relevant institutions in the public sector with the financial management it system</p> <p>PPL 2022 assigns to the CNA the function of creating and maintaining databases relating to supplier qualification and the sanctions regime but it does not assign the specific function of designing and managing other online platforms or an e-Procurements system.</p>				

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5(c) Organization, funding, staffing, and level of independence and authority

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) The normative/regulatory function (or the institutions entrusted with responsibilities for the regulatory function if there is not a single institution) and the head of the institution have a high-level and authoritative standing in government.	<p><i>Summary: The normative/regulatory competence is assigned to the Minister of Finance who has high level and authoritative standing in government. PPL 2005 assigns competences and responsibilities for discharge of many of the normative/regulatory functions to the "Procurement Service", a department of MoF. In practice, however, there is no "Procurement Service" department within the MoF fulfilling the competences and responsibilities envisaged in PPL 2005 and responsibility for discharge of these functions is entrusted to various departments, offices and institutions which does not guarantee a holistic, cohesive or coordinated approach to the procurement policy and implementation.</i></p> <p><i>(See analysis at sub-indicator 5(a) and 5(b))</i></p>		<p>Criterion not met</p> <p>While globally, the normative/regulatory function is assigned to MoF that has an authoritative standing in Government, within MoF the normative regulatory functions/ responsibilities are assigned to multiple units and even outside MoF (e.g., ADN) and there is no coordinating mechanism to allow for a cohesive operation, monitoring and developing a holistic strategic vision.</p> <p><i>This gap is allocated a red flag because it relates to organizational issues which extend beyond the Ministry of Finance and cannot be remedied simply by changes in the PPL 2022.</i></p>	Yes	<p>Conduct a critical and evidence-based review of the actual set up and performance of the units in charge of the normative and regulatory functions to improve institutional clarity in assigning responsibilities, appropriate organization structure, financial and human resources consistent with the tasks assigned. Identify a coordinating mechanism to ensure a cohesive implementation and improvement of the procurement policy.</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(b) Financing is secured by the legal/regulatory framework, to ensure the function's independence and proper staffing.	<p><i>Summary: this normative-regulatory function is assigned to various entities and funding has not been sufficient to effectively implement the requirements of PPL 2005.</i></p> <p>Some of the functions in the PPL 2005 have not been carried out because, among others, the procurement functions have not been adequately resourced including the creation of the institutional setting to comprehensively discharge the normative functions identified under the law.</p>		<p>Criterion partially met</p> <p>Not all functions identified by PPL 2005 have been (appropriately) established, funded and discharged, including the creation of a "procurement service"</p>		Ensure funding to support the successful discharge of all the public procurement functions including those added under PPL 2022.
(c) The institution's internal organization, authority and staffing are sufficient and consistent with its responsibilities.	<p><i>Summary: internal organization is not sufficiently clear and resourced to deliver this function. CNA, that plays a central role in Timor-Leste public procurement has staffing issues which impede proper delivery on its functions.</i></p> <p>Within MOF, the key departments that discharge this function are <i>Gabinete de Apoio Jurídico</i> (GAJ) and CNA. GAJ supports the entire legal activity under the MoF jurisdiction, not only procurement. GAJ staffing seems adequate in quality and number being staffed with national and international lawyers. CNA, however, seems to have difficulty balancing the procurement function and advisory, training functions, including because of the fact that attracting qualified staff is difficult. Given its position and impact on the quality of the procurement system, CNA strengthening is critical to the good functioning of public procurement in Timor-Leste.</p>		<p>Criterion not met</p> <p>The organization and staffing of the unit at the center of Timor-Leste public procurement system, CNA, is not robust enough for CNA to discharge its responsibilities, even more so that additional responsibilities were assigned under PPL 2022.</p>		Strengthen CNA ability to attract qualified staff or outsource consultants when need be. Review and update National Procurement Commission (<i>Comissão Nacional de Aproveitamento</i> , CNA) operational regulation to clarify its organizational structure, resources, and responsibilities for it to effectively carry out its responsibilities assigned by PPL 2022.

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5(d) Avoiding conflict of interest

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<p>(a) The normative/regulatory institution has a system in place to avoid conflicts of interest.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 5(d) Assessment criterion (a): - Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses). Source: Survey.</p>	<p><i>Summary: there are provisions of conflict of interest in the legal and regulatory framework [see 14(a)(c)] but no conflict-of-interest provisions specific to the normative regulatory function.</i></p> <p>MAPS standard points to the requirement for individuals discharging the normative/regulatory functions to not have been directly involved in procurement operation and at the same time monitoring/auditing procurement practices or acting on behalf of appeals body.</p> <p>There is no information that this principle is considered when defining the responsibilities of staff that delivers the normative regulatory function (including handling complaints). The Anti-corruption law requires that the conflict of interest be disclosed but there is no information to support that enforcement of this requirement including in relation to the normative/regulatory function.</p> <p>Perception of conflict of interest from CAC baseline survey⁹⁶ states that conflicts of Interest between public and private interests were noted by the interviewees in the areas of procurement and other interactions between the public and private sector. This is an area where the overlap of public and private interests effect Government policy and decisions to benefit individuals rather than citizens. This was seen as a result of: a) the limited population of the country with a small elite base which as in many other countries, leads to conflicts of interest; b) the close-knit nature of families and social networks; and c) limitations in the enforcement of the asset declaration regime and beneficial ownership of companies.</p>	<p><i>Recommended quantitative indicator</i></p> <p><i>Perception that the normative/regulatory institution is free from conflicts of interest (in % of responses).</i></p> <p>75% of the respondents under the MAPS Private sector survey opined those conflicts of interest are obvious or abundant and are mostly due to political affinities and/or unclear role of public officials.</p>	<p>Criterion not met</p> <p>While there are legal requirements to prevent/mitigate conflict of interest, there are no specific provisions/ mechanisms to avoid conflict of interest in the fulfillment of the normative/regulatory function. This is all the more important now, as CNA may discharge some of these functions in parallel with continuing being involved in managing procurement processes and transactions.</p>		<p>Include in the regulations requirements for preventing conflict of interest specific to the normative and regulatory framework, that is:</p> <p>“individuals discharging the normative/regulatory functions (e.g., monitoring/auditing procurement practices or acting on behalf of appeals body) should not be involved in procurement operations/transactions”.</p>

⁹⁶ 2019 Final Report Baseline Survey for the Commission Anti-Corruption (CAC) para 5.5.

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	PPL 2022 continues to address conflict of interest but does not refer to the conflict of interest specifically related to the normative/regulatory function.				

6. Procuring entities and their mandates are clearly defined.

6(a) Definition, responsibilities and formal powers of procuring entities

The legal framework provides for the following:

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(a) Procuring entities are clearly defined.	<p><i>Summary: Procuring entities are defined in PPL 2005. There is room for improvement in the definition, with removal of interchangeable terms. PPL 2022 remedies this issue by using a single defined term.</i></p> <p>The term used to describe procuring entities for the purposes of PPL 2005 is “Public Service”. The definition of “Public Service” encompasses the concept of contracting entity and procurement entity and terms may be used interchangeably, according to context. The definition of “Public Service, contracting entity or procurement entity” (<i>Serviço Público, entidade adjudicante ou entidade de aprovisionamento</i>) is set out in A.3(j) PPL 2005, being “Services (Serviços) andthat have the power to participate directly in the management of supply and the competence to initiate a procedure for the acquisition of goods, for the execution of works or the provision of services for their own benefit or third parties.”</p> <p>There are additional provisions in the PPL covering situations where, in specified cases ,the procurement is carried out by the Procurement Service on behalf of public entities and for establishment of a centralized procurement body (“<i>Central de Fornecimentos do Património</i>”). In practice, neither the Procurement Service nor the centralized procurement body</p>		<p>Criterion partially met</p> <p>The definition of procuring entities could be improved through simplification, with the removal of interchangeable terms. PPL 2022 addresses this gap.</p>		Review definition of procuring entities and consider introducing a single defined term.

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	<p>have been established (see analysis, Gaps and recommendations at 5(b) and 6(b))</p> <p>PPL 2022: PPL 2022 simplifies the definitions, using the defined term “contracting entity” and referencing the National Procurement Commission as responsible for the instruction and conduct of procurement procedures above a fixed threshold.</p> <p>It also identifies the “National Procurement Commission” – (A.20(2)(b) as the public service specialized in the instruction and conduct of procurement procedures above a fixed threshold.</p> <p>PPL 2022 does not include any more the Supply Central “Central de Fornecimentos do Património”.</p>				
(b) Responsibilities and competencies of procuring entities are clearly defined.	<p><i>Summary: Responsibilities and competencies of procuring entities are generally well captured in the PPL 2005 including the setting up, competence, operation and decisions of contract committees, tender opening committees and tender evaluation committees “júri”. The Public Contracts regime lists the competent authorities to approve and sign and administer public contracts. For infrastructure projects funded by the Infrastructure Fund, Infrastructure Fund Administration Manual of November 2020 (“IF Manual”) clearly sets out the responsibilities of procuring entities, including in RACI (Responsible, Accountable, Consulted, Informed) Matrices.</i></p> <p>The definition of “Public Service” (i.e., procuring entities) set out in A.3(j) PPL 2005 refers to Public Services as entities that have the power to participate directly in the procurement management and the competence to initiate a procedure for the acquisition of goods, for the execution of works or the provision of services for their own benefit or third parties.</p> <p>There are provisions in PPL 2005 related to the responsibilities and competences of procurement entities, for example, concerning the setting up, competence, operation and</p>		Criterion met		

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	<p>decisions of contract committees, tender opening committees and tender evaluation committees (<i>júri</i>). A.79 - A.80 of PPL 2005 concerns the appointment and composition of the competition jury and provides that a competition jury is competent to: admit or exclude competitors based on requirements set out in pre-qualification or competition documents; decide on pre-qualification of competitors on basis set out in pre-qualification documents; assess bids and qualify competitors according to selection criteria laid down in competition documents; assess to select and classify competitors; and propose a competitor to be awarded a contract.</p> <p>A.6 DL 11/2005 Public contracts legal regime lists the competent authorities to approve and sign public contracts. A.9 DL 11/2005 A.9 also sets out a mix of powers and responsibilities of the Public Procurement Authorities relating to the provision, implementation and management of policy advice on public contracts, signing and administration of contracts, contractual claims, and well as wider record keeping and reporting functions.</p> <p>For infrastructure projects funded by the Infrastructure Fund, CAFI/SGP Infrastructure Fund Administration Manual, November 2020 ("IF Manual") clearly sets out the responsibilities of procuring entities, including in RACI (Responsible, Accountable, Consulted, Informed) Matrices.</p>				
(c) Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability. *	<p><i>Summary: Procuring entities are required to establish a designated, specialized procurement function with the necessary management structure, capacity and capability. The organic law of the 8th Constitutional Government (DL 14/2018) and each organic law of each government agency identifies procurement as one of the functions of the respective government agency. The PPL 2022, A.20(2)(c) and A. 23 clearly identifies the procurement function as the</i></p>	<p><i>Minimum indicator - procuring entities with a designated, specialized procurement function (in % of total number of procuring entities).</i> Information not available.</p>	<p>Criterion partially met</p> <p>There are clear requirements for the procuring entities to establish a designated specialized procurement function but there is no statistical data on what is the status of the establishment of this</p>		<p>MoF to monitor the status of implementation of this requirement relative to establishment of</p>

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<p>// Minimum indicator</p> <p>// * Quantitative indicator to substantiate assessment of sub-indicator 6(a)</p> <p>Assessment criterion (c): - procuring entities with a designated, specialised procurement function (in % of total number of procuring entities).</p> <p>Source: Normative/regulatory function.</p>	<p><i>“procurement service” (serviço de aprovisionamento), which is the organic unit of the contracting entity responsible for instructing and conducting the provisioning procedures with the necessary management structure, capacity and capability.</i></p> <p>A.8 Decree Law No. 30 of 2020 Organization of direct and indirect state administration (“DL 30/2020”),⁹⁷ applying to both direct and indirect state administration, provides for segregation of functions and refers specifically to separation of procurement services function from finance and asset management services function. In practice this function may be carried out by a designated individual rather than a separate dedicated unit as a separate unit may be a disproportionate relative to the size and procurement activities of a particular administration.</p> <p>A.39(1), applying to Ministries, provides for Ministries to have designated services, including a designated procurement service.</p> <p>PPL 2022: A 23 PPL 2022 clearly identifies the procurement function as the “procurement service” (<i>serviço de aprovisionamento</i>), which is the organic unit of the contracting entity responsible for instructing and conducting the provisioning procedures with the necessary management structure, capacity and capability.</p>		function at the level of the contracting entities.		the procurement function.
(d) Decision-making authority is delegated to the lowest competent levels consistent with the risks associated and the	<p><i>Summary: Decision making is delegated based on risk and the level of delegation is being gradually increased giving more authority to the implementing agencies. The principle of decentralization is expressed in PPL 2005, whilst acknowledging that some public services may lack administrative and financial competences to lead their own</i></p>		Criterion is met		

⁹⁷ Decree Law No.30 of 2020 Organization of the state direct and indirect administration [*Organização da Administração Direta e Indireta do Estado*]. Jornal da República https://www.mj.gov.pt/jornal/public/docs/2020/serie_1/SERIE_I_NO_31.pdf

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monetary sums involved.	<p><i>procurements, in which case, the MoF "Procurement Service" is obliged to undertake procurement on behalf of those public services. Accountability for decision making is defined according to the value of contracts. The new PPL 2022 promotes increased decentralization of decision as it removes the requirement for PM and CoM approval for large contracts and encourages further delegation of authority within the procuring agencies. Contracts below USD 500,000 are delegated to the General directors that are in charge of procurement.</i></p> <p>A principle of decentralization is expressed in PPL 2005, whilst acknowledging that some public services may lack administrative and financial competences to lead their own procurements, in which case, the MoF "Procurement Service" is obliged to undertake procurement on behalf of those public services (A.18 PPL 2005). In practice, Public Services often use the option provided for in A.18 PPL. An appendix to PPL 2005 includes a definition of "Decentralization": "For procurement purposes, it is the competence that Public Services to launch procurement procedures and award public contracts in order to satisfy their needs."</p> <p>Delegation of powers for carrying out procurement is also provided for in the legal framework, as follows: Procurements up to USD 1 million: A.15(2) PPL 2005 provides that the following entities shall have competence to sign and approve contracts for procurements up to USD 1 million:</p> <ul style="list-style-type: none"> • Holders of organs of sovereignty, <u>with competence to delegate**</u> • Ministers and Secretaries of State, pursuant to their respective laws, <u>with competence to delegate**</u> • All other public bodies and services subject to Government Budget discipline and mostly funded by it. 				

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	<p>A.15(1) PPL 2005 (amended by DL 38/2011) provides those competent entities to approve procurement procedures prior to the signing of contracts, which are:</p> <ul style="list-style-type: none"> • Council of Ministers (CoM) for procurements in excess of USD 5 million. • Board of Administration of Infrastructure Fund for procurements up to USD 5 million (including in framework of Infrastructure Fund). • Human Capital Development Fund board of Administration for procurements up to USD 5 million (including in framework of Human Capital Development Fund). • Prime Minister, <u>with powers to delegate</u> for remaining procurement procedures for procurement between USD 1 million and USD 5 million. ** <p>PPL 2005, A.21, <u>Delegation of Powers</u>, provides that those <u>competent entities asterisked (**) above</u> may delegate powers for carrying out of procurement. Such delegation must be in writing. Competencies may not be further delegated and the entity delegating competences cannot be exonerated from responsibility for compliance with the PPL 2005 for delegated procurements.</p> <p>PPL 2005, A.95, Protocols for simplified procedures, permits delegation of execution of small value (up to USD 5 thousand) recurring contracts, according to rules of the MoF and principle of decentralization.</p> <p>For infrastructure projects funded by the Infrastructure Fund, CAFI/SGP Infrastructure Fund Administration Manual, November 2020 ("IF Manual") clearly sets out the decision-making authority for procuring entities and other stakeholders such as SGP, CNA and ADN, including in RACI (Responsible, Accountable, Consulted, Informed) Matrices.</p>				

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag s?	Recommendations
	<p>PPL 2022: The new PPL 2022 promotes increased decentralization of decision as follows: (i) it removes the requirement for PM and Council of Ministers' approval for large contracts and (ii) provides that the following are competent for the decision to open the procurement procedure and for the award decision, as well as for any other decision that falls to the awarding entity or the public contractor:</p> <p>a) In procedures worth more than USD 500,000, the management bodies of the Public Administrative Sector services and entities with extended financial autonomy.</p> <p>b) In procedures with a value equal to or less than USD 500,000, the top manager of the organic unit responsible for the provisioning and contracting of Public Administrative Sector services and entities with extended financial autonomy.</p>				
(e) Accountability for decisions is precisely defined.	<p><i>Summary: The level of accountability is defined according to the value of the contracts. Thresholds and authorities for decision making and ratification are identified in 6(a)(d) above and It is noted that for the Infrastructure Fund accountabilities are clearly defined in the 2020 Infrastructure Manual (RACI matrices).</i></p> <p>Accountability for decision making is defined according to the value of contracts (A.15 PPL 2005 Entities with powers to authorize procurement procedures – approval and signature of contracts) A.87 PPL 2005 has provisions on decision making and ratification) (see indicator 6(a)(d)).</p> <p>For infrastructure projects funded by the Infrastructure Fund, CAFI/SGP Infrastructure Fund Administration Manual, November 2020 ("IF Manual") clearly sets out the accountability of procuring entities and other stakeholders such as SGP, CNA and ADN, including in RACI (Responsible, Accountable, Consulted, Informed) Matrices.</p>		Criterion is met		

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6(b) Centralized procurement body

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) The country has considered the benefits of establishing a centralized procurement function in charge of consolidated procurement, framework agreements or specialized procurement.	<p>Summary: <i>GoTL provided for the establishment of centralized procurement body in the PPL 2005, “Central de Fornecimentos do Património”, but this body was never created. Drugs and medical equipment procurement is centralized and handled by a specialist body, SAMES and the Government is exploring the centralized purchase of vehicles. GoTL, at this stage, does not contemplate creating a centralized procurement body in charge of “whole of government procurement” for other common/recurrent goods and services. Neither the current law practice, nor the PPL 2022, consider the framework agreement approach as one of the procurement tools available.</i></p> <p>PPL 2005 makes provision for a central service for procurement of common use goods. A. 3(1)(e) PPL 2005 Definitions defines the Central Service for Goods Purchasing (<i>Central de Fornecimentos do Património</i>) (CFP) which is the centralized service in charge of purchasing and storing goods for common use for public services and making them available according to need. A.107 PPL 2005 provides that all procuring entities (but not public sector companies) are under a duty to check prior to commencing a procedure whether goods are available from the Central Service for Goods Purchasing. The CPF has not been established.</p> <p>Timor-Leste has established a centralized agency for the consolidated procurement of drugs and medical equipment (SAMES) (see indicator 6(b)(b)).</p>		<p>Criterion partially met</p> <p>PPL 2005 had provisions for an agency to procure commonly used goods but the agency in charge was not established. While Timor-Leste has centralized procurement for the procurement of drugs and medical equipment and is considering adopting it for vehicles, the Government has not looked in depth into the benefits of establishing a centralized procurement function to cover “whole of government procurement” for the bulk of recurrent goods and services based on framework agreements. Such agreements are not identified in the PPL.</p>		<p>Consider the benefits of establishing a centralized procurement function for recurrent procurement based on framework agreements. Consider conducting a study on the experience in other countries (e.g., Cabo Verde). Include “framework agreement” in the procurement regulation as an additional option to existing procurement approaches.</p>

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	<p>The Government preference is for centralized procurement/purchases in specialized fields⁹⁸ conducted by specialist organizations. Centralized procurement for most common/recurrent goods and services is not currently proposed and framework agreements are not envisaged at this point.</p> <p>Note: The focus of analysis in this sub-indicator is on the identification and analysis of provisions/activities for centralized aggregated procurement functions. These are envisaged in PPL 2005 but not realized, other than in the case of SAMES whose functions, special regime and activities are presented in this sub-indicator.</p> <p>The Assessment Team considered whether to include information on activities of the CNA in this analysis of sub-indicator 6(b). The Assessment Team concluded that analysis of the role, activities and functions of the CNA should not be classified as a “centralized procurement function” for the purposes of sub-indicator 6(b) and are more properly addressed in sub-indicators 5(a) and 5(b).</p>				
<p>(b) In case a centralized procurement body exists, the legal and regulatory framework provides for the following:</p> <ul style="list-style-type: none"> • Legal status, funding, responsibilities and decision-making powers are clearly defined. • Accountability for decisions is precisely 	<p><i>Summary: In Timor-Leste the only agency that conducts centralized procurement is a central medical store, that is the Autonomous service for health drugs and equipment (Serviço Autónomo de Medicamentos e Equipamentos de Saúde - SAMES) whose legal and regulatory framework has appropriate provisions regarding its authority, funding and responsibilities with regard to discharging their procurement function.</i></p> <p>SAMES has a special status, being a “public institution” (IP--<i>instituto público</i>) within the Ministry of Health in Timor-Leste that enjoys financial, administrative and patrimonial</p>		Criterion met		

⁹⁸ The Government is currently exploring centralized purchasing of vehicles.

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<p>defined.</p> <ul style="list-style-type: none"> • The body and the head of the body have a high-level and authoritative standing in government. 	<p>autonomy. The core functions of SAMES⁹⁹ are the procurement, storage and distribution of pharmaceuticals, consumables, medical equipment for the health facilities of Timor-Leste.</p> <p>Its legal status funding and decision-making responsibilities are clearly defined in Decree Law No. 18 of 2015¹⁰⁰ ("DL 18/2015") that includes SAMES Statute and its management/oversight structure (Board of director and Fiscal Council) with clearly defined powers. According to A. 17 DL 18/2015, SAMES has its own management of financial, asset and human resources exercising all necessary acts that support its institutional objectives. It is governed by the national legal regime of the Budget and Financial Management but is also subject to other legislation applicable to bodies of the indirect administration of the State that have administrative, financial and patrimonial autonomy.</p> <p>SAMES administrative structures and specific responsibilities at various levels are detailed in the Ministerial Diploma DM 21/2016. Procurement and contract management are core functions of SAMES and are set at appropriate levels of authority. Its administrative structure contains a Directorate for Procurement led by a National Director nominated by the Minister of Health at the proposal of the Executive Director; it is further divided in 2 departments one for planning and procurement and the other for contract management with specific responsibilities. The Executive Director, leads, and coordinates the activities of the SAMES service directorates, being responsible for negotiating supply program contracts with the National Health System (<i>Serviço Nacional de Saúde – SNS</i>) entities, authorizing requisitions (requests for supply) of medicines, medical supplies, and medical-hospital equipment,</p>				

⁹⁹ Established by Government Decree No.2 of 2004.

¹⁰⁰ Decree Law No.18 of 2015 Autonomous service for health drugs and equipment [Serviço Autónomo de Medicamentos e Equipamentos de Saúde]. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2015/serie_1/SERIE_I_NO_23.pdf

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag s?	Recommendations
	<p>as well as exercising other powers under the law and the SAMES Statute.</p> <p>Accountability for procurement decisions is defined in DL 2/2009 that establishes the special procurement regime for SAMES. A.3 DL 2/2009 mentions that the authority is vested in the Director general (Executive Director) who can delegate supply procedures to senior executives, without being exonerated of responsibility. The senior executives are not allowed to further delegate this authority vested in them by the Director general or Executive Director who is also the President of the Board of Directors. The Board of Directors is in charge of appeals.</p> <p>PPL 2022 removes the special procurement regime used by SAMES, bringing its procurement within the scope of PPL 2022 which is a step forward in streamlining procurement in the country.</p>				
(c) The centralised procurement body's internal organisation and staffing are sufficient and consistent with its responsibilities.	<p><i>Summary: SAMES organization and functions and staffing are consistent with its responsibilities. SAMES has authority and ability to outsource expertise when needed. This provides the basis for considering this criterion met.</i></p> <p>SAMES has an appropriate authority level and budget to hire expertise. Its staff has expertise in the area of drugs and medical equipment procurement. It has benefited from donors' technical assistance that contributed to strengthening its management capacity. For instance, with the support of the World Bank, SAMES implemented a pharmaceutical management system called "mSupply" with a view to provide essential information on drug stocks, including distribution, details on the international market price of drugs imported, and drug expiration dates, with the capability to generate reports to improve supply chain management and procurement. SAMES has the ability to recruit "professional" staff and supports staff training (about 40 each year as per the annual action plan).</p>		Criterion met		

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7. Public procurement is embedded in an effective information system.

7(a) Publication of public procurement information supported by information technology

The country has a system that meets the following requirements:

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(a) Information on procurement is easily accessible in media of wide circulation and availability. Information is relevant, timely and complete and helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.	<p><i>Summary: Information on procurement is accessible in media of wide circulation and on the e-procurement portal but is fragmented. It includes tender notifications information, status in the procurement process, awards. Award information is not complete and awards on the portal were not available to the public, at the time of the assessment (only to registered users). Finally, information published does not include relevant information related to the procurement cycle such as: procurement plans, tender documents, debarred companies, appeals, contract information.</i></p> <p>While the information published is useful to potential bidders to identify opportunities, it is not sufficient (see 7(a)(c)) and in the right format (see 7(a)(d&e)) to enable interested parties to monitor outcomes, results and performance.</p> <p>The information is split because the PPL 2005 requires that all tender notification for (national open procedure, international open procedure, pre-qualification) shall be published in the press and optional in electronic media while the award notifications, are to be published in the same media where the tender notification was posted while mentioning succinctly the reasons for the choice and the time frame for protests [see 1c(c)]. PPL 2022 requires compulsory advertisement on the Procurement Portal – this is expected to improve the accessibility and completeness of information the e-portal.</p> <p>IT platforms that contain procurement: a. Procurement portal web site supports publishing tender announcement and contract award. However, the tendering</p>		<p>Criterion partially met</p> <p>There is a gap between what currently exists and what would be considered international best practice. While tender notification information is publicly available and award information is published the information published is not complete and not easily accessible (awards on the e-portal are not public) to enable outside parties to monitor outcomes, results and performance.</p>		<p>Develop a full-fledged and functional e-procurement system that would enable Information to be automatically published ensuring timely, accurate and complete procurement information.</p> <p>In the meantime, improve the e-procurement portal, i.e., completeness, accuracy, timeliness, downloadability, searchability and links to actual bidding documents.</p>

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	<p>process is done manually outside any e-procurement system</p> <table><tr><th colspan="5">Current Tenders</th></tr><tr><th rowspan="2">Type of Business</th><th colspan="3">Current Tenders</th><th rowspan="2">All Published</th></tr><tr><th>Today</th><th>Last 7 days</th><th>All</th></tr><tr><td>Agriculture</td><td>0</td><td>0</td><td>7</td><td>257</td></tr><tr><td>Books and Office Supplies</td><td>0</td><td>0</td><td>74</td><td>5892</td></tr><tr><td>Cleaning and Fumigation</td><td>0</td><td>0</td><td>4</td><td>1215</td></tr><tr><td>Computing and Technology</td><td>0</td><td>0</td><td>53</td><td>2606</td></tr><tr><td>Construction</td><td>0</td><td>0</td><td>42</td><td>6472</td></tr><tr><td>Consultancy Services</td><td>0</td><td>0</td><td>12</td><td>1497</td></tr><tr><td>Electricity and A/C</td><td>0</td><td>0</td><td>17</td><td>1650</td></tr><tr><td>Food and Catering</td><td>0</td><td>1</td><td>54</td><td>4089</td></tr><tr><td>Fuel</td><td>0</td><td>0</td><td>38</td><td>5047</td></tr><tr><td>Furniture</td><td>0</td><td>0</td><td>19</td><td>903</td></tr><tr><td>Health Supplies</td><td>0</td><td>0</td><td>11</td><td>1530</td></tr><tr><td>Others</td><td>0</td><td>1</td><td>292</td><td>49592</td></tr><tr><td>Printing services</td><td>0</td><td>0</td><td>17</td><td>2766</td></tr><tr><td>Security and Defence</td><td>0</td><td>0</td><td>5</td><td>973</td></tr><tr><td>Transportation</td><td>0</td><td>0</td><td>59</td><td>5806</td></tr><tr><td>Uniforms and Clothing</td><td>0</td><td>0</td><td>15</td><td>754</td></tr><tr><td>total</td><td>0</td><td>2</td><td>688</td><td></td></tr></table> <p>or other information system. Tendering documents are only provided on paper.</p> <p>b. Free Balance IFMIS supports among others: Vendor registration; Purchase Orders; Vendor Payments.</p> <p>Table 9: Snapshot of tender statistics in the online procurement -portal</p> <p>Source : e-Procurement Portal May 2022</p>	Current Tenders					Type of Business	Current Tenders			All Published	Today	Last 7 days	All	Agriculture	0	0	7	257	Books and Office Supplies	0	0	74	5892	Cleaning and Fumigation	0	0	4	1215	Computing and Technology	0	0	53	2606	Construction	0	0	42	6472	Consultancy Services	0	0	12	1497	Electricity and A/C	0	0	17	1650	Food and Catering	0	1	54	4089	Fuel	0	0	38	5047	Furniture	0	0	19	903	Health Supplies	0	0	11	1530	Others	0	1	292	49592	Printing services	0	0	17	2766	Security and Defence	0	0	5	973	Transportation	0	0	59	5806	Uniforms and Clothing	0	0	15	754	total	0	2	688					
Current Tenders																																																																																																							
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Fuel	0	0	38	5047																																																																																																			
Furniture	0	0	19	903																																																																																																			
Health Supplies	0	0	11	1530																																																																																																			
Others	0	1	292	49592																																																																																																			
Printing services	0	0	17	2766																																																																																																			
Security and Defence	0	0	5	973																																																																																																			
Transportation	0	0	59	5806																																																																																																			
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(b) There is an integrated information system (centralized online portal) that provides up-to-date information and is easily accessible to all interested parties at no cost.	<p><i>Summary: There is a centralized online portal https://www.mof.gov.tl/government-procurement/eprocurement-portal/?lang=en but the information is not complete and access by the public is limited. The procurement portal supports the publication and notifications of tender announcements and contract awards as well as some sample bidding documents and procurement regulations. Some information e.g., awards, sample of bidding documents, and statistics is not accessible to the public.</i></p> <p>PPL 2022: mandates the publication of all tender opportunities on the portal which will ensure the integration of procurement information on one platform.</p>		<p>Criterion partially met</p> <p>Although there is a centralized online portal called the e-procurement portal, the information is not complete as the publication of opportunities on the portal is not mandated. Awards, sample of bidding documents, and statistics are not accessible to the public or are accessible “on and off”.</p>		<p>The centralized online portal must be further developed as an integrated information system to improve: its completeness, accuracy, timeliness, downloadability, searchability, links to actual bidding documents.</p> <p>It must be made more accessible to the public and user friendly. The procurement information should be verified for accuracy and published consistently to provide “up-to-date” information including tender announcements, contract awards, procurement plans, bidding documents, complaints/appeals, debarred</p>

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					companies and contract implementation related information.
<p>(c) The information system provides for the publication of: *</p> <ul style="list-style-type: none"> • procurement plans • information related to specific procurements, at a minimum, advertisements or notices of procurement opportunities, procurement method, contract awards and contract implementation, including amendments, payments and appeals decisions • linkages to rules and regulations and other information relevant for promoting competition and transparency. <p>// Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a)</p>	<p><i>Summary: The e-procurement portal publishes tenders, status, awards, limited statistics on tenders and awards by sector and method provides links to the procurement guides and legislation (albeit not updated -see 1(a)(d)) and a few examples of bidding documents. The search and filtering mechanisms are not user friendly and access to certain web pages is limited based on registration. The system does not publish procurement plans, debarred companies (although there is a dedicated page) and contract implementation information including amendments, payments and appeals decisions.</i></p> <p>There is a significant gap between what is currently measurable procurement information and the procurement information which needs to be systematically captured, monitored and reported. Due to the lack of a procurement information system like an e-procurement system, most of the quantitative indicators cannot be reliably generated. Therefore, moving forward the country would benefit from an e-procurement system which systematically captures procurement information including information listed under this indicator.</p>	<p><i>Minimum indicator // Quantitative indicators to substantiate assessment of sub-indicator 7(a) Assessment criterion</i></p> <ul style="list-style-type: none"> • <i>Procurement plans published (in % of total number of required procurement plans) Procurement plans are not published.</i> • <i>Key procurement information published along the procurement cycle (in % of total number of contracts:</i> <ul style="list-style-type: none"> • <i>invitation to bid (in % of total number of contracts) Published but not all centralized- this statistic is not available.</i> • <i>contract awards (in % of total number of contracts) - (purpose, supplier, value.</i> 	<p>Criterion partially met</p> <p>While information on tender opportunities and awards is published in the newspaper and e-procurement portal, there is a significant gap between what is currently procurement information and the procurement information which needs to be systematically captured, monitored and reported.</p>		Implement an e-procurement system and in the meantime expand the scope of publication on the e-procurement portal - to systematically capture the procurement information listed under 7(c).

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>Assessment criterion (c):</p> <ul style="list-style-type: none"> • procurement plans published (in % of total number of required procurement plans) • key procurement information published along the procurement cycle (in % of total number of contracts) : • invitation to bid (in % of total number of contracts) • contract awards (purpose, supplier, value, variations/amendments) • details related to contract implementation (milestones, completion and payment) • annual procurement statistics • appeals decisions posted within the time frames specified in the law (in %). <p>Source: Centralized online portal.</p>		<p>Published but not all centralized- this statistic is not available.</p> <ul style="list-style-type: none"> • <i>details related to contract implementation (implementation (milestones, completion and payment) Not published. Not available</i> • <i>annual procurement statistics Some statistics on tenders and awards are published on the portal.</i> • <i>appeals decisions posted within the time frames specified in the law (in %) Appeals decisions are not published.</i> 			
<p>(d) In support of the concept of open contracting, more comprehensive information is published on the online portal in</p>	<p><i>Summary: Contract information is not published to support the concept of open contracting., i.e., including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework). The level of information in public</i></p>		<p>Criterion not met:</p> <p>The public including civil society do not have the information to monitor public procurement and</p>		<p>Timor-Leste needs to develop a culture of transparency supported by information and</p>

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each phase of the procurement process, including the full set of bidding documents, evaluation reports, full contract documents including technical specification and implementation details (in accordance with legal and regulatory framework).	<p><i>procurement is limited (see 7(a) to 7(c)). The civil society has neither the information nor the capacity necessary to monitor public procurement.</i></p> <p>Information published does not support the concept of “open contracting” as it is not characterized by completeness, accuracy, timeliness, downloadability, searchability, and information that covers both the procurement and contract implementation processes from planning to contract completion. Non-state actors, civil society entities, local public oversight champions and others are not mobilized and trained to be able to effectively understand and monitor this information.</p>		support the concept of “open contracting”.		<p>digital tools and generate information characterized by completeness, accuracy, timeliness, downloadability, searchability. Consider publishing information on all stages of procurement/contract implementation process to support the “open data” agenda.</p> <p>Until connectivity is improved, and a full-fledged e-GP system is in place, for lower value contracts other options may be also used to ensure that procurement information is reaching the targeted audience: journals, bulletin</p>

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					boards, at the agency level and boards on the implementation contracts sites etc.
<p>(e) Information is published in an open and structured machine-readable format, using identifiers and classifications (open data format). *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 7(a)</p> <p>Assessment criterion (e):</p> <p>- Share of procurement information and data published in open data formats (in %).</p> <p>Source: Centralized online portal.</p>	<p><i>Summary: Information is not published in an open and structured machine-readable format using identifiers and classifications (open data format).</i></p> <p>Publishing user-friendly machine-readable information by using open data standards is not supported by the existing systems. Such an approach would enable performance monitoring for measuring impact and would promote the engagement of non-state actors (businesses and citizens) in supporting reforms but also in exercising oversight over their implementation.</p>	<p><i>Recommended quantitative indicator:</i></p> <p>- Share of procurement information and data published in open data formats (in %).</p> <p>None.</p>	<p>Criterion not met.</p> <p>Procurement information is not published in an open and structured machine-readable format using identifiers and classifications (open data format).</p>		<p>Ensure that the future e-procurement system supports an Open Contracting Data (OCDS ¹⁰¹ Standard format.</p> <p>In the meantime, ensure that the portal is more user friendly, searchable, make the award section public to allow the monitoring of the awards by the non-state stakeholders.</p>
<p>(f) Responsibility for the management and operation of the system is clearly defined.</p>	<p><i>Summary: Responsibility for the management and operation of the systems is assigned to the Office of Integrated Systems of Financial Management Information (Gabinete de Sistemas Integrados de Informação de Gestão Financeira – GSIIIGF).</i></p> <p>According to the MoF organic DL 43/2020 (art 38)</p>		<p>Criterion met</p>		

¹⁰¹ OCDS, a free non-proprietary data standard for public contracting has features that enable easy access and processing of public procurement data and provides standardized documents to publish, a common structured data model tool kits to publish standardized data

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	<p>1. The Office of Integrated Management Information Systems Financial Policy, abbreviated as GSIIGF, is the central service of the MoF responsible for the development and management of an integrated management information system financial services in all services and bodies of the public administration.</p> <p>2. It is up to the GSIIGF: a) Develop, promote, disseminate, and ensure the implementation of policies, standards, strategies and procedures of an Integrated Information System Financial Management in all services and public administration bodies.</p> <p>b) Develop management information systems financial services in all services and bodies of the Public Administration, in the implementation of the process e-government.</p> <p>c) Provide support, information and resolution services of problems related to the mentioned system in the preceding paragraph.</p> <p>(d) develop and manage the e- system and their technological infrastructure in all MoF's work units, including the control of access of users.</p> <p>(e) ensure the functioning of management systems existing financial resources, in particular the System of Government Resource Planning (GRP) and the Performance Budgeting System (PB);</p> <p>h) Ensure the carrying out of training actions in the area financial computer applications, in close collaboration with the Training Center for Public Finance Management. (<i>Centro de Capacitação de Gestôdas Finanças Públicas</i>).</p>				

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7(b) Use of e-Procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) E-procurement is widely used or progressively implemented in the country at all levels of government. *</p> <p><i>// Minimum indicator //</i></p> <p>* Quantitative indicators to substantiate assessment of sub-indicator 7(b)</p> <p>Assessment criterion (a): uptake of e-Procurement</p> <p>- number of e-Procurement procedures in % of total number of procedures</p> <p>- value of e-Procurement procedures in % of total value of procedures</p> <p>Source: e-Procurement system.</p>	<p><i>Summary: At this stage e-procurement is neither widely used nor progressively implemented in the country. There is no e-procurement system for the bidding process beyond tender and contract award announcements supported by the procurement portal.</i></p> <p>Procurement is carried out mainly through manual processes and there is no information system which provides the minimal electronic procurement functionality, including at a minimum ePublishing / Notification, eTendering / eQuotation, eEvaluation / Awarding, eProcurement Plan, eRegistration).</p> <p>The Government has not embarked on the planning of the e-procurement agenda and no assessment readiness, strategy, road map, have been developed yet.</p> <p>An important step ahead was achieved by incorporating in PPL 2022 provisions for the development of an e-procurement system.</p>	<p><i>Minimum indicator // * Quantitative indicators to substantiate assessment of sub-indicator 7(b) Assessment criterion (a):</i></p> <p><i>uptake of e-Procurement</i></p> <p><i>- number of e-Procurement procedures in % of total number of procedures</i></p> <p>None.</p> <p><i>- value of e-Procurement procedures in % of total value of procedures</i></p> <p>None.</p>	<p>Criterion not met</p> <p>Timor-Leste doesn't have an e-procurement system and the e-procurement agenda has not been launched yet except for allowing for e-procurement to be developed under the new PPL 2022.</p>		<p>Engage in the development of an e-procurement system starting with a readiness assessment, formulating a strategy that identifies the technical approach, cost estimate, technical and functional requirements, technical assistance required and a road map. It should provide for the digitization of the procurement transactions including at a minimum eRegistration , eProcurement Plan , ePublishing, Notification, eTendering, eQuotation, eEvaluation, eAwarding. Such strategy should take into</p>

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					account the maturity of the e-GP ecosystem and ensure interoperability with other government systems (such as IFMIS, taxation, business registration). Include in the scope of the e-Procurement functionality modules to address red flags, data analytics, contract management, complaints citizen access. Finally make sure that the e-procurement design does not raise barriers for SMEs and foreign firms' participation in public procurement.
(b) Government officials have the capacity to plan, develop and	<i>Summary: Since the level of informatization in procurement is very limited (an e-portal with few functionalities) there is a capacity gap at the level of government officials, that needs to</i>		Criterion partially met		Develop and include in the change management plan

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manage e-Procurement systems.	<p><i>be filled for the effective planning, development, and management of an e-procurement (end-to-end systems).</i></p> <p>Government officials, given their position in the country administrative systems, play an important role in ensuring that the system is developed in harmony with the e-procurement ecosystem components¹⁰² that include the ICT industry, the level of connectivity and availability of internet services at reasonable prices, human resources and educational institutions, training and change management, communication and coordination in the context of a supportive legal framework.</p>		There is limited capacity to plan develop and manage and end to end e-Procurement systems.		the capacity building of government officials involved in developing, managing, and using e-procurement.
(c) Procurement staff is adequately skilled to reliably and efficiently use e-Procurement systems.	<p><i>Summary: There is some capacity to handle the current level of informatization but not sufficient to support the e-procurement agenda (end to end systems).</i></p> <p>The procurement staff is currently manually managing the paper-based procurement process while publishing limited procurement information on the procurement portal. Implementing e-procurement will require a large drive to build capacity to reliably and efficiently use e-Procurement systems</p>		<p>Criterion not met</p> <p>The capacity gap to move from an e-procurement portal with limited functionality (with manual uploading of tender and awards notifications) to an end-to-end e-procurement system is significant. The true challenge is to get the users accept the new systems and move from a paper based to digital processes.</p>		In order to move from a paper based to a digital system, the capacity building agenda of the users should focus on implementing a solid change management plan with a focused strategy on e-procurement roll out and adoption.
(d) Suppliers (including micro, small and medium-sized enterprises) participate in a public procurement market increasingly	<p><i>Summary: There is no e-procurement system to require suppliers (including micro, small and medium-sized enterprises) to handle electronic procurement.</i></p>	<p>Recommended quantitative indicators:</p> <p>- bids submitted online (in %)</p> <p>None.</p>	<p>Criterion not met</p> <p>Suppliers aren't participating in the digital public procurement market as there isn't an e-procurement system in Timor-Leste.</p>		Develop an e-procurement system and promote it to the supplier community

¹⁰² Nguyen, Nielsen, and Sæbø, 2017

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<p>dominated by digital technology. *</p> <p>* Recommended quantitative indicators to substantiate assessment of sub-indicator 7(b)</p> <p>Assessment criterion (d):</p> <ul style="list-style-type: none"> - bids submitted online (in %) - bids submitted online by micro, small and medium-sized enterprises (in %) <p>Source: e-Procurement system.</p>		<p>- bids submitted online by micro, small and medium-sized enterprises (in %)</p> <p>None.</p>			<p>(including micro, small and medium-sized enterprises) by providing online training materials and through sensitization methods, so vendors become informed and active users of the country e-procurement</p>
<p>(e) If e-Procurement has not yet been introduced, the government has adopted an e-Procurement roadmap based on an e-Procurement readiness assessment.</p>	<p><i>Summary: While the Government contemplates the development of e-procurement as part of the next generation of public procurement reforms, there is nothing concrete so far.</i></p>		<p>Criterion not met.</p> <p>As e-Procurement agenda has not been launched yet the government is yet to adopt an e-Procurement roadmap based on an e-Procurement Readiness assessment.</p>		<p>Develop an e-Procurement Readiness Assessment which would put forth an e-Procurement Roadmap, enabling identifying required qualifications, functional and technical requirements for a solution adapted to the</p>

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					needs of Timor-Leste.

7(c) Strategies to manage procurement data

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) A system is in operation for collecting data on the procurement of goods, works and services, including consulting services, supported by e-Procurement or other information technology.	<p>Summary: <i>There is no comprehensive system for collecting data for goods works and services including consulting services supported by e-procurement or other information technology.</i></p> <p>The e-portal provides some information on tender notifications, and awards but it is not complete as there is no mandate to publish all notices on the portal. CNA and the IFMIS system provide some information on the procurement and contracting process but the completeness, and reliability of data are questionable (see analysis under 7c/d).</p>		<p>Criterion partially met</p> <p>There is no e-procurement system for systematically collecting information on procurement of goods, works and services.</p>		<p>Implement an e-procurement system which systematically collects data on the procurement of goods, works and services, including consulting services.</p> <p>In the meantime, improve the collection and reliability of information in IFMIS, line ministries, and CNA's data bases.</p>
(b) The system manages data for the entire procurement process and allows for analysis of trends, levels of participation, efficiency and economy of	<p>Summary: <i>While the-procurement portal consolidates some information for tendering notices and awards and IFMIS contains raw data on the procurement processes (dates, number of bids received, initial contract amount) there is no system managing data for the entire procurement process that allows for analysis of trends, levels of participation,</i></p>		<p>Criterion not met</p> <p>There is no system for managing data for the entire procurement process for the analysis of trends, levels of participation, efficiency</p>		<p>Implement an e-Procurement system which manages data for the entire procurement process and</p>

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procurement and compliance with requirements.	<p><i>efficiency and economy of procurement and compliance with requirements.</i></p> <p>The data collected is incomplete, does not cover the entire procurement process. The e-portal, IFMIS, CNA and line ministries data does not enable the generation of key reliable statistics to allow for performance analysis.</p>		and economy of procurement and compliance with requirements.		allows for analysis of trends, levels of participation, efficiency and economy of procurement and compliance with requirements. In the meantime, improve the integrity of data its completeness and the collection of information in the procurement e-portal, IFMIS, line ministries, and CNA to enable the calculation of reliable KPIs.
(c) The reliability of the information is high (verified by audits).	<p><i>Summary: In the absence of data audit and the manual uploading of raw data the reliability is deemed low.</i></p> <p>The quality of data sometimes suffers from: mis-categorization of operations, duplication of vendors, mistakes in dates entries of procurement processes because the uploading is manual and not always in real time.</p>		<p>Criterion not met</p> <p>The reliability of the information is low.</p>		Implement an e-Procurement system which manages data for the entire procurement process and provide a high level of reliability of procurement information that is verifiable by audits.

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					In the meantime, ensure that the partial data collected by various systems has a reasonable degree of accuracy and reliability so it can be used confidently for performance monitoring.
<p>(d) Analysis of information is routinely carried out, published and fed back into the system. *</p> <p>// Minimum indicator //</p> <p>* Quantitative indicators to substantiate assessment of sub-indicator 7(c)</p> <p>Assessment criterion (d):</p> <ul style="list-style-type: none"> • total number and value of contracts • public procurement as a share of government expenditure and as share of GDP • total value of contracts awarded through competitive methods in the most recent fiscal year. <p>Source:</p>	<p>Summary: there is no analysis of information that is regularly carried out to improve the systems.</p> <p>There is no system in place to routinely process and analyze data on public procurement, there isn't any analysis of information which is routinely carried out, published and fed back into the system.</p> <p>The e-portal and IFMIS information is not consolidated and analyzed routinely. The system does not generate "ready-made" indicators to be analyzed by the management for follow up action.</p> <p>There is no complete consolidated procurement database. MoF has its own central data base, which is meant to consolidate all information of all contracts awarded by all procuring agencies/municipalities/line ministries in the country. Most of the procuring line ministries and agencies, including NPC, also maintain their own separate decentralized databases, which are not linked to MoF's central database. The MoF data base was not up to date at the time of PEFA (2018) and MAPS (2021) assessments and there appears to be large gap of missing data of contracts awarded by the procuring agencies/line ministries, including CNA. At the time of the MAPS assessment, the data available in MoF's</p>	<p>Minimum indicator * Quantitative indicators to substantiate assessment of sub-indicator 7(c) Assessment criterion (d):</p> <ul style="list-style-type: none"> • total number and value of contracts. <p>Information on the total number and value of contracts is not available</p> <ul style="list-style-type: none"> • public procurement as a share of government expenditure and as share of GDP <p>Assessment Team, rough estimate: 40% of GDP and 50% of public expenditures</p> <ul style="list-style-type: none"> • total value of contracts awarded through competitive 	<p>Criterion not met</p> <p>There is no information analysis routinely carried out, published and fed back into the system. (e.g., competitive versus noncompetitive, number of responsive bidders, duration of the procurement cycle by stage, compliance, contract implementation statistics number of amendments, cost and time overrun).</p>		<p>Implement an e-Procurement system which routinely performs analysis of procurement information and publish it and then feed it back into the systems,</p> <p>In the meantime, the partial information in the e-portal and IFMIS and CNA should be used, with data accuracy ensured, to routinely generate key performance indicators to</p>

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Normative/regulatory function/E-Procurement system.	centralized data base for contracts awarded in 2021 amounted to USD 270 mil. While the records more than doubled between 2020 and 2021 they still account for only 1/3 of the roughly estimated total procurement spending. The PEFA assessment conclusion is still valid. The discrepancy is likely due to limited use of the e-procurement module by procuring agencies/line ministries and the delay in entering the data. In the absence of any external reports verifying the data entered, the centralized database is currently unable to provide a complete and reliable record in real time of all the contracts awarded in the country. The PEFA score for this dimension was assessed as a D.	methods in the most recent fiscal year. Information on the total value of contracts by method at the national level is not available.			inform the management decisions.

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8. The public procurement system has a strong capacity to develop and improve.

8(a) Training, advice and assistance

There are systems in place that provide for:

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(a) substantive permanent training programs of suitable quality and content for the needs of the system.	<p><i>Summary: There are no permanent and substantive training programs linked to competency standards delivered to procurement staff and other stakeholders and no clear authority in charge of establishing the standards for training in procurement [see 5(b)(i) above].</i></p> <p>There are no permanent and substantive training programs linked to competency standards delivered to procurement staff and other stakeholders. In practice, CNA has provided training or hands-on support to procuring agencies on demand. PPL 2022 clearly identifies CNA as the authority in charge for procurement workforce training stating that it is CNA's responsibility to "promote the training of human resources in the area of supply.</p> <p>There are also training programs (both presential and online) carried out by the Office of Reform Policy and Capacity Building in PFM (GPRCGFP) through the Training Center for Public Finance Management. They cover mostly the PFM area - with some procurement content.</p> <p>MoF through PFMO program has provided training, including in the area of procurement, to municipalities. Finally, a significant share of the procurement training is carried out by IFIs and while it has some relevance to national procurement it focuses on the IFIs procurement policies and procedures.</p> <p>Government supports the capacity building agenda including in the area of procurement (as described below) however, a permanent training program in public procurement is still to be developed.</p> <p>The Strategic Development Plan 2011-2030/Human Resources Development and Training, underscores the need</p>		<p>Criterion not met</p> <p>There are no permanent and substantive training programs aligned to competency standards in the area of procurement – training is mostly ad hoc.</p>		<p>Develop permanent and substantive training programs in the area of procurement consistent with defined competency standards and based on a robust needs assessment. To maximize the program outreach, create a pool of procurement trainers; roll-out e-learning courses on public procurement including contract management and implement quick "intermediate" certification of public procurement workforce. It is also advisable to</p>

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	<p>to build capacity to limit reliance on international expertise. The plan outlines the need for systematic, targeted and job-relevant training and professional development approaches. It includes training through the National Institute of Public Administration, which will be strengthened to meet the training challenges of the civil service.</p> <p>The Human Capital Development Fund is the primary mechanism to build the human resources for effective, accountable government in the years ahead. The fund covers the costs of training and professional development for civil servants, including overseas scholarships and fellowships. In addition, a training center has been established by the Ministry of Finance to provide training in financial management, accounting, auditing and procurement.</p> <p>PPL 2022: clearly identifies CNA as the authority in charge for procurement workforce training stating that it is CNA's responsibility to "promote the training of human resources in the area of supply</p>				<p>foster partnership with one or two training centers or higher education institutions for the establishment of sustainable procurement capacity</p> <p>Priority should be given to building CNA capacity. ADB is planning to support these efforts.</p>
(b) routine evaluation and periodic adjustment of training programmes based on feedback and need.	<p><i>Summary: there is no permanent training program regularly evaluated and updated.</i></p> <p>There is no permanent training program in procurement that is adjusted periodically based on participants' feedback. CNA provides training sporadically and on demand. GPRCGFP training is not systematic in the area of procurement.</p>		<p>Criterion not met</p> <p>Given that there are not structured and permanent procurement training programs, evaluation is not used as a standard tool for adjusting the training program to the participants' needs.</p>		<p>Develop procurement training programs and consistently include evaluation as a standard tool to elicit participants' feedback for the training programs continuous improvement.</p>
(c) advisory service or help desk function to resolve questions by procuring entities, suppliers and the public.	<p><i>Summary: The advisory function is assigned to the National Procurement Commission (CNA) which is part of MoF and has responsibility for providing technical assistance on procurement procedures of a value below USD 1 million carried out by all public entities. The National Development</i></p>		<p>Criterion partially met</p> <p>CNA and ADN are not able to meet the demand for advisory services. The weak capacity at the</p>		<p>Strengthen CNA and ADN abilities to discharge these advisory functions while</p>

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	<p><i>Agency (ADN) has also a role in providing technical input in specified areas of expertise – for the legal analysis see indicator 5(b) above. Both CNA and ADN are currently discharging this function however with limitation because of the limited resources as underscored in in audit reports and in interviews.</i></p> <p>While CNA supports public agencies in procurement (with advising or carrying procurement on their behalf, at their request), ADN I.P. is responsible for the quality of projects of public works, developing standards and reference unit prices that are used by Government agencies for developing specifications and making contract estimates. ADN scope of activity is quite extensive as it covers projects under the Infrastructure Fund, line ministries, municipal program (PDIM). To better provide these services ADN has been decentralized to 12 municipalities.</p> <p>CNA has challenges in attracting the number and caliber of procurement specialists needed to deliver its functions in particular the advisory one as conducting procurement takes precedence, ADN, with its 150 staff cannot effectively deliver its role given the broad scope of its activities coupled with the weak capacity at the operational level and lack of qualified engineers and supervisors at the project level.</p>		agency/project level makes the advisory function quite challenging and unable to deliver the results expected. The advisory services do not include the private sector.		building up the capacity at the procuring/implementing agencies level to ensure that advisory services are used judiciously. Expand them to the private sector. The critical based review of the entire organizational set-up recommended under 5(c) may further inform the advisory role of these agencies that have a key role in the effective functioning of procurement in Timor-Leste.
(d) a strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement.	<p><i>Summary: There is no capacity building strategy well-integrated with other measures for developing the capacity of key actors involved in public procurement</i></p> <p>The government has included this objective in the TL Strategic Plan 2011-2020: “The civil service requires a sustained long-term reform program to improve its capability to undertake its functions. Reform in areas including management and leadership, systems and procedures, administration, accounting and</p>		<p>Criterion not met.</p> <p>There is no procurement strategy for developing the capacity of key actors involved in public procurement.</p>		Formulate a procurement capacity building strategy informed by a skill gap inventory while considering the needs of other procurement stakeholders

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	finance, budget execution and procurement, knowledge and document management, and strategic planning is needed¹⁰³ . The agency in charge is clearly identified under the PPL 2022 as the CNA.				(private sector and civil society). Consider technology as a tool to develop the procurement capacity and increase outreach. Engage training institutes and academia to leverage existing resources and ensure sustainability of the proposed actions. Include a roadmap for accreditation, certification, and professionalization of the procurement function.

¹⁰³ TL Strategic Plan 2011-2020, p.181.

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8(b) Recognition of procurement as a profession

The country's public service recognizes procurement as a profession:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Procurement is recognized as a specific function, with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.	<p><i>Summary: Procurement is not recognized as a specific function with procurement positions defined at different professional levels, and job descriptions and the requisite qualifications and competencies specified.</i></p> <p>The legal framework (see criterion 5 (b) (j) above) addresses only the training needs and does not address professionalization of the function which does not seem to be a priority for the moment.</p> <p>To be considered a profession, procurement should be subject to the special career regime governed by Decree Law No. 27 of 2008 General Career Regime of the Public administration¹⁰⁴ as amended ("DL 27/2008"). A.28 DL 27/2008 provides that the creation of the special regime careers - <i>carreira de regime especial</i> has to be approved by the Civil Service Commission and the Council of Ministers. The recommendation is based on an assessment by a working group created for this purpose that needs to justify the special regime proposed based on the need/benefits obtained and financial impact, among others. Once approved, a career subject to a special regime is governed by its own regulation.</p> <p>PPL 2022: addresses only the training of procurement staff.</p>		<p>Criterion not met</p> <p>Procurement is not recognized as a profession nor are there mechanisms in place to certify or accredit procurement workforce based on levels of competence.</p>		Develop a strategy and mechanisms for procurement staff development and recognition through accreditation and certification mechanisms. Consider professionalizing certain procurement positions that require high standards of competence.
(b) Appointments and promotions are competitive and based on qualifications and professional certification.	<p><i>Summary: while there is a comprehensive legal framework based on principles of merit and competition, in practice appointments are also driven by the political cycle as there are frequent changes of procurement staff once there is a change in the administration. The long-term use of consultants/fixed</i></p>		<p>Criterion not met</p> <p>While there are stringent rules for recruitment and promotion, procurement staff is often replaced once new management is</p>	Yes	Apply the stringent rules for recruitment and promotion and emphasize the tenure of civil

¹⁰⁴ Decree Law No. 27 of 2008 General Career Regime of the Public administration [Regime das Carreiras e dos Cargos de Direcção e Chefia da Administração Pública], as amended by DL 24/2016. Jornal da República https://www.mj.gov.tl/jornal/public/docs/2008/serie_1/serie1_no34.pdf

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	<p><i>term employees may be detrimental to the development of the civil service workforce.</i></p> <p>Appointments and promotions within the civil service are carried out under the Decree Law No.34 of 2008 on the Regime for competition, recruitment, selection, and promotion of the public administration personnel (“DL 34/2008”) and the results are published in the official Bulletin (<i>Jornal da Republica</i>). Competitive recruitment based on qualifications (criteria include general and specialized knowledge, experience based on a written test and interview) are embedded in the legal framework.</p> <p>Fixed terms consultants are often recruited to complement the civil service workforce. The recruitment follows the Legal Regime of Fixed-Term Employment Contracts Right in Public Administration¹⁰⁵ (“Decree 6/2015”) that allows for more flexibility – while it provides for open and competitive procedures it also allows for direct selection based on a short list of qualified candidates.</p> <p>The Infrastructure Manual recommends that SGP emphasize that the building capacity of IF staff (based on needs analysis and adequate training programs) must take priority to outsourcing. It further underscores that the long-term use of consultants/fixed term employees may be detrimental to the development of the civil service workforce.</p> <p>Reportedly, in practice appointments are also driven by the political cycle as there are frequent changes of procurement staff once there is a change in the administration. CAC baseline survey 2020 states that political patronage and influence over staff appointments may create a politization of the public service with a resulting impact on technical capacity.</p>		<p>appointed with a new political cycle.</p> <p>Fixed- term consultants are used to fill in staff gaps and this does not help stabilizing a robust work force of civil servants in public procurement.</p> <p><i>This gap is allocated a red flag because it cannot be immediately mitigated through actions in the public procurement systems; addressing this gap requires the involvement of the Public Service Commission. The other reason is the fact that outside political factors can significantly impede achieving these objectives.</i></p>		<p>servants so they cannot be easily replaced. This may require involvement of the Public Service Commission.</p> <p>Use consultants only for highly specialized areas and promote the development of civil servants to stabilize the workforce in procurement.</p>

¹⁰⁵ Government Decree No.6 of 2015 Legal Regime of Fixed-Term Employment Contracts Right in Public Administration [Regime Jurídico dos Contratos de Trabalho a Termo Certo na Administração Pública]. *Jornal da República* https://www.mj.gov.tl/jornal/public/docs/2015/serie_1/SERIE_I_NO_44.pdf

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	The Anti-corruption law emphasizes recruitment based on principles of transparency and fairness. The Code of conduct under the Anti-corruption law requires appropriate procedures for recruiting in areas that are vulnerable to corruption.				
(c) Staff performance is evaluated on a regular and consistent basis, and staff development and adequate training is provided.	<p><i>Summary: While there is a comprehensive framework for staff performance evaluation it is not consistently enforced as indicated by some public agencies interviewed.</i></p> <p>The Infrastructure Manual 2020 confirms that there are no actual mechanisms for staff evaluation.</p> <p>Staff performance evaluation is regulated by Decree Law No.14 of 2008 on the Regime for evaluating the performance of civil servants, as amended.¹⁰⁶ DL 14/2008 as amended, requires that civil servants' evaluation be annual, confidential, based on specific criteria that linked with the agency objectives and may be subject to appeal. There are conflict-of-interest provisions that address family relations. Agencies are held to report statistics on evaluation and the CPF to create a data base and an annual report to support the management and development of human resources. The Legal Regime of Fixed-Term Employment Contracts Right in Public Administration (Decree 6/2015) A. 33 mentions that consultants/fixed term employees are evaluated based on the performance indicators included in their Terms of Reference and work plan.</p>		<p>Criterion partially met</p> <p>There is a comprehensive framework for staff performance evaluation, but it is not consistently enforced.</p>		A monitoring system to be set in place and enforced consistent with the requirements under the civil service regulations.

¹⁰⁶ Decree Law No.14 of 2008 on the Regime for evaluating the performance of civil servants [Regime da Avaliação do Desempenho dos Trabalhadores da Administração Pública], as amended by DL 18/2009 and 19/2011. Jornal da República https://mj.gov.tl/jornal/public/docs/2008/serie_1/serie1_no17.pdf

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	However, the DLs are not fully enforced and consistently applied: one Ministry confirmed that they conducted the staff evaluation for one year and then was discontinued. The Infrastructure Fund manual makes a recommendation to create a personnel evaluation system with strong feedback mechanism.				

8(c) Monitoring performance to improve the system

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) The country has established and consistently applies a performance measurement system that focuses on both quantitative and qualitative aspects.	<p><i>Summary: The country has not established and consistently applies a performance measurement system in procurement that focuses on both quantitative and qualitative aspects in order to improve procurement outcomes</i></p> <p>There are no comprehensive monitoring mechanisms based on performance indicators neither at the agency nor at the national level for procurement. Regarding contract implementation, MoF captures the progress of contracts in financial terms in its annual budget documents. However, there are no other indicators for contract implementation (physical progress, time/ cost overrun, number of amendments payment time) to ensure effective performance monitoring.</p>		<p>Criterion not met</p> <p>The country has not established a performance measurement system in public procurement to evaluate the effectiveness of the public procurement system, from individual procurements to the country, as a whole.</p> <p><i>This gap is allocated a red flag because a performance measurement system at the country level would require a concerted effort for standardization by all actors involved (line ministries, local government, SGP, ADN, IFMIS).</i></p>	Yes	Develop reporting and monitoring systems for procurement and strengthen those of contract management as recommended under 4(a)(c).

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(b) The information is used to support strategic policy making on procurement.	<p><i>Summary: There is no data on procurement processes that is collected and analyzed systematically, hence there is no information to support strategic policy making in procurement. Policy making is reportedly informed by discussions with practitioners and lessons from experience. which may be relevant but not sufficient to yield best outcomes in policy formulation.</i></p> <p>The e-portal contains statistics on the tendering notices and awards that are published on the portal and some that can be generated by users based on criteria. And IFMIS contains data related to the procurement cycle. However, there is no evidence that the data set is complete, cleaned-up, captured, processed, analyzed and used to assess the operation of the systems and support strategic policy decisions.</p>		<p>Criterion not met</p> <p>The country has not established a performance measurement system in public procurement that can support policy making in procurement.</p>		<p>Develop performance monitoring systems and identify Key Performance Indicators (KPIs) for procurement and contract management to support public procurement policy improvement. Build performance monitoring in the existing systems (in the short term) and ensure that in the future e-procurement system generates a broader range of performance data.</p>
(c) Strategic plans, including results frameworks, are in place and used to improve the system.	<p><i>Summary: Strategic plans, including results frameworks, are not in place and used to improve the system.</i></p> <p>It is expected that this MAPS exercise will develop a strategic plan to guide the reform processes in Timor-Leste that will cover the legal, institutional, implementation, oversight, and integrity aspects of public procurement. This is an opportunity for the government to build on it by developing an implementation strategy aligned with other reform initiatives,</p>		<p>Criterion not met.</p> <p>There are no strategic plans to structure reform initiatives to improve public procurement outcomes nor a results framework to monitor the implementation of the planned reforms.</p>		<p>The Government to adopt a strategic approach to procurement to develop strategic plans with results framework for proper monitoring. This</p>

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	with results framework and KPIs to support effective monitoring.				MAPS will help jump-start the process with the development of a strategic action plan.
(d) Responsibilities are clearly defined.	<p><i>Summary: Responsibilities are not clearly defined.</i></p> <p>Responsibilities are not clearly defined in the area of performance monitoring (see analysis under 5(b)(d) above). Under the PPL 2005 this function is assigned to the MoF "Procurement Service" which has not been established.</p> <p>PPL 2022: This function is not clearly captured in the PPL 2022, but the Assessment Team understands that the CNA may be in charge as CNA has access to the central procurement information and the PPL allows that CNA carries out other tasks assigned by law.</p>		<p>Criterion not met</p> <p>Performance monitoring responsibilities are not clearly defined.</p>		<p>The regulatory framework should describe this function more comprehensively and clearly and assign it unambiguously. If this function is assigned to more than one unit, these units' roles should be clearly described to avoid overlap and a coordination mechanism should be set in place.</p>

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Pillar III. Public Procurement Operations and Market Practices

9. Public procurement practices achieve stated objectives.

9(a) Planning

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Needs analysis and market research guide a proactive identification of optimal procurement strategies.	<p><i>Summary: Needs analysis is part of budget preparation and procurement planning.</i></p> <p><i>While market research may be part of the feasibility study of large infrastructure projects, market research/engagement is not part of the procurement strategic planning of other high risk high value contracts or of contracts in areas where the market has not been tested. CdC audit identifies the lack of market research as a reason of the overestimated contract value that results in bids with higher prices (reportedly do not deviate too much from the price estimate). It is noted that PPL 2022 strengthened the approach to market and the provisions on market engagement.</i></p> <p>Market research is addressed as part of the Procurement Strategic Planning in the Guide # 1, and captures the following key actions:</p> <ul style="list-style-type: none"> • undertake, if required, an informal Request for Information (RFI) for the purpose of market research and intelligence gathering. • develop and document a knowledge of the supply market commensurate with the nature, complexity and level of risk of the purchase — this may include market structure, level of competition, availability of goods/services, capability of suppliers • briefly describe the strategy for approaching the market— this may consider type of approach (e.g., tender, expression of interest), type and scope of contract, contract term etc. 		<p>Criterion not met</p> <p>While there is a Guide on market research there is no evidence that the strategic procurement planning through market research / engagement is a practice in public procurement.</p>		<p>Use market research for high value/high risk and lower/high risk value contracts and in areas where the knowledge of market conditions is limited. Mainstream market engagement to support “fit-for-purpose” procurement approaches and cost estimates, robust technical specifications and realistic timelines. Update as appropriate and disseminate/ Best Practice Guide #1 and include it in procurement training. Ensure its translation in</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<ul style="list-style-type: none"> undertake market research and articulate key findings including: • market structure, number of suppliers, manufacturers, importers, distributors, capability, capacity, market domination, market share; • level of competition, availability of alternatives, stability of the market; • supply chain and nature of relationships and dependencies within the supply market; and • consider supplier preferencing, size of acquisition in the marketplace, value of the Public Service's business to the supplier. detail the strategy for approaching the market and discuss the linkages to market research findings: • direct negotiation, limited (selective) tender, public tender, expression of interest, request for proposal; • type of contract (period or pane) contract); • scope of contract; • length of contract. <p>The Guide includes valuable guidance. However, it is in English, and the level of English language is quite low. This coupled with the absence of regular training programs impacts on the practitioners' ability to apply it.</p> <p>The new law PPL 2022 has strengthened the legal provisions regarding the market engagement under A.67: It states that as part of the preparation of the procurement plan, contracting entities may carry out market consultations, with the aim of obtaining information on market conditions, in relation to the goods, services or works they intend to contract. It also underscores that those preliminary consultations are not binding on the contracting entity or entities consulted.</p>				Timor-Leste official/working languages.
(b) The requirements and desired outcomes	<i>Summary: There is no clarity in the definition of technical specifications as signaled by ADN that points out to the weak technical capacity at the agency level that results in weak</i>		Criterion not met		Strengthen the formulation of technical

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of contracts are clearly defined.	<p><i>designs. Auditors are also pointing to these aspects in their reports.</i></p> <p>Audit reports cite contracts where no bids were received because of specifications that did not reflect the market realities or bidding documents where “trade names” were used restricting competition; contracts with significant changes in the scope of works and monetary value during implementation, vague requirements that impact on the market response and comparability of bids, requirements that do not envisage the maintenance cost etc. and may affect the value for money objective. The National Development Agency (ADN) advisory role could be strengthened in the area of public works procurement and contract management since this agency has acquired a wealth of experience in supervising the quality of technical designs, technical specifications and managing public contracts. ADN could step up its role in the provisions of tools such as: updating and disseminating reference prices for construction material, (<i>preços de referência</i>), compiling and disseminating lessons learned from various procurement cases, unit-price analysis, developing capacity building programs in this area. The Decree Law 60 /2020 of 25 November, conferred to ADN the statute of Public Institute with an abbreviation (ADN, I.P.) under the Ministry of Planning and Budget (MPO) and it is expected to enable this agenda.</p>		Weaknesses in the definition of technical specifications. ADN does not have the capacity to adequately supervise the quality of specification in the TL procurement. There is a dearth of technical capacity at the line-ministries level.		<p>specifications though research, market engagement. Strengthen ADN role in the provision of tools and capacity building. Update as appropriate and disseminate Guide practice number 2 on the preparation of the technical specifications and include it in procurement training. Ensure its translation in Timor-Leste official/working languages.</p>
(c) Sustainability criteria, if any, are used in a balanced manner and in accordance with national priorities, to ensure value for money.	<p><i>Summary: Sustainability considerations (environmental, social and economic) are used in the bidding process and reflect the national priorities including mitigating the negative impact of capital investments on the environment, developing the local market by providing more opportunities to local bidders, creating jobs, transferring knowledge and innovation to boost productivity and promote economic growth. However, there is no strategic approach, and instructions to practitioners, in the use of such criteria to ensure a balanced approach and there</i></p>		<p>Criterion partially met</p> <p>Sustainability criteria are used in more complex contracts, but they are not comprehensive, based on a strategic approach and market analysis, supported by guidance to ensure they are applied in a balanced manner.</p>		Subordinate these requirements to a Public Procurement Sustainable Strategy (see Indicator 3) for better balancing procurement

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	<p><i>is no information on the achievement of the current contractual requirements and if objectives are attained.</i></p> <p>Complex bidding documents are supported by environmental and social studies and there are requirements for the use of the life cycle cost in the evaluation to capture the entire costs of goods procured (initial capital costs operating and maintenance) to make the best value for money decision. There are set aside contracts to support the local construction industry where only local bidders have access. Finally, bidding documents incorporate certain sustainability requirements, that are used in evaluation, such as: bidders to commit to developing local capacity, supporting SMEs, transferring technology and promoting innovation; other criteria refer to job creation, purchasing goods and services locally, providing opportunities for regional and district development.</p>				requirements with sustainability objectives.

9(b) Selection and contracting

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Multi-stage procedures are used in complex procurements to ensure that only qualified and eligible participants are included in the competitive process.	<p><i>Summary: Multi-stage procedures are used (consistent with PPL 2005), to ensure that only qualified bidders and eligible participants are included in the procurement process.</i></p> <p>For instance, pre-selection methods such as pre-qualification of suppliers and short-listing of consultants are used to ensure that only qualified candidates are invited at the bidding/selection stage. A two-envelope procurement method is often used to separate the technical from the price evaluation with the technical envelope containing information in response to technical, professional, commercial and industrial and local development requirements. Envelope two must contain the bid price and only qualified and eligible participants with an acceptable</p>		Criterion met		.

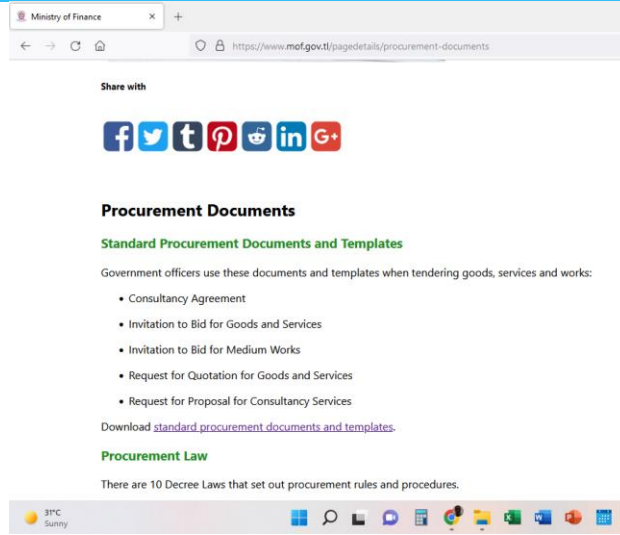
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	technical proposal are chosen to compete for the next stage where the price is the only evaluation factor.				
(b) Clear and integrated procurement documents, standardized where possible and proportionate to the need, are used to encourage broad participation from potential competitors.	<p><i>Summary: Bidding documents are used mostly modeled after the IFIs'; however, it is urgent need to create standard documents that are more adapted to Timor-Leste procurement (and now to the PPL 2022) and in the official/working languages to boost competition and develop the national market.</i></p> <p>There are examples of bidding documents in the English language, posted on the e-procurement portal (goods and services, medium works, RFP for consultants, request for quotations) that generally follow the IFIs SPDs at the date when they were developed 2010/2011 and they have not been adjusted to capture further changes in the TL legal framework and international practice. Both the procuring entities and the private companies could benefit from a set of bidding documents in Timor-Leste official languages, standardized where possible, tailored to Timor-Leste regulations, proportionate to the need and covering a wider range of procurement. Such documents are essential tools to support efficiency and transparency in procurement and to encourage broad participation from potential competitors. Currently they cannot be opened/downloaded by the public.</p> <p>Consistent with PPL 2022 A 24 (d), CNA is charged with preparing models and forms with a view to standardizing procedures.</p>		<p>Criterion not met</p> <p>A suite of robust national standard bidding documents tailored to the national legislation are still to be developed and be published on the portal and made accessible to the public in the official languages including Tetum to allow access for a wider section of the bidders.</p>		<p>Develop an adequate range of standard/sample bidding documents aligned to the local legislation in the official languages including in Tetum to increase efficiency and boost competition. Ensure consistent public access. Simplified bidding documents should be developed for small value/ low risk contracts as well as specialized ones.</p>

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	 <p>Screen shot e portal May 2022</p>				
(c) Procurement methods are chosen, documented and justified in accordance with the purpose and in compliance with the legal framework.	<p><i>Summary: based on the information available it was established that the justification of the procurement method is not a current practice albeit required by law.</i></p> <p>While the regulations (A.22 & A.46 PPL 2005) require that the procurement procedure be justified, various audits (2017,2019, 2021) signal the fact that the methods chosen are often not justified in particular for the less competitive methods including direct contracting.</p>		<p>Criterion not met</p> <p>While required the justification of the selection of a less competitive method is not always documented.</p>		Besides training of the procurement workforce, strengthen internal controls to ensure that this requirement is met, and procurement methods are duly justified.
(d) Procedures for bid submission, receipt and opening are clearly described in the	<p><i>Summary: procedures of bid submission are well described; bidders' representatives are allowed and participate in the bid opening process. Civil society can attend the bid opening under PPL 2005, but this is not a practice.</i></p>		<p>Criterion partially met</p> <p>Procedures are clearly described in the bidding documents However,</p>		Create the conditions to enable the civil society to monitor

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procurement documents and complied with. This means, for instance, allowing bidders or their representatives to attend bid openings, and allowing civil society to monitor bid submission, receipt and opening, as prescribed.	Procedures for bid submission are clearly described (submission, sealing and marking, deadline for bid submission, late bids, withdrawal substitution and modification of bids, bid opening and are generally complied with. The PPL 2005 allows representatives of the public to attend but no cases of civil society participation have been identified. PPL 2022 does not have specific provisions on the civil society participation in bid opening.		the civil society does not monitor bid submission, receipt and opening.		bid submission, receipt and opening (see also 9c/f).
(e) Throughout the bid evaluation and award process, confidentiality is ensured.	<i>Summary: MAPS Private sector surveys and CAC surveys are raising issues related to conflict of interest and confidentiality that are related to bids evaluation and award.</i> Appropriate clauses are included in the regulations [see indicator 1 f(e) above] requiring the protection of the confidentiality of documents and information data submitted by competitors. Bidding documents contain appropriate clauses. In practice, conflict of interest is identified as an issue in Timor-Leste and there are few effective safeguards so far to avoid it. Hence there is a high risk that confidentiality is not always ensured, and this was confirmed by the CAC surveys. For instance, the 2019 CAC baseline Survey has identified as one of the key vulnerabilities the maintenance of confidentiality of information including leaking information to potential bidders. The MAPS private sector survey has confirmed the existence of conflict of interest. 73% of the respondents under the MAPS Private sector survey opined that conflict of interests are obvious or abundant and is mostly due to political		Criterion not met Given the high risk for conflict of interest and the fact that mechanisms for enforcement are still to yield results, confidentiality is not always ensured		Enforce disclosure of potential conflict of interest requirements under anti-corruption law including for members of the <i>júri</i> and appeal commissions. Consider member of the <i>júri</i> signing commitments to confidentiality. Develop SOPs with clear provisions for safeguarding confidential information in documents: bids, evaluation reports.

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	affinities and/or unclear separation of duties of public officials.				
(f) Appropriate techniques are applied, to determine best value for money based on the criteria stated in the procurement documents and to award the contract.	<p><i>Summary: there are techniques used to determine value for money but information on the weights allocated to evaluation criteria (financial and technical) is not typically disclosed.</i></p> <p>Tools such as: rated criteria, life cycle cost, the two envelope systems are used to support balancing quality and cost and achieving value for money in procurement. However, there is no legal requirement to disclose the relative weights allocated to price and technical criteria and typically bidding documents do not include this information.</p> <p>Note: the legal requirement to disclose the weights allocated to the financial and technical evaluation criteria was incorporated in the new law.</p>		<p>Criterion partially met.</p> <p>The price/quality ratio is typically not stated in the bidding documents which limits the transparency of the process and value for money proposition as bidders are not informed how the procuring entity values different criteria.</p>		Improve model documents, best practice guides to make explicit the need for disclosing the relative weights applied (financial and technical). This is also a topic for the training program.
(g) Contract awards are announced as prescribed.	<p><i>Summary: Contract awards are announced in journals and on the e-portal, but the notifications of award are not complete..</i></p> <p>Generally, award notifications are published in journals or on the e-procurement portal but they do not contain the level of information required under the PPL, i.e., to lay out the reasons for awarding to the preferred candidate and informing about the opportunity to complain within a certain period of time which undermines transparency and integrity of the system and the enforcement of the challenge mechanism.</p> <p>A.89 PPL 2005 stipulates the obligation to advertise the jury decisions on the intention to award the contract in the same place where the tender announcement was made and requires also stating succinctly the reasons for the award. It should also contain a warning on the right to complain within a certain timeframe (A.96).</p>		<p>Criterion partially met</p> <p>Awards are announced but do not contain the level of information required by the PPL (e.g., the reasons for the award and reminder on the right to complain within a certain time frame).</p>		In addition to rigorous training, develop a template for awards notification to include all the elements required to improve transparency.
(h) Contract clauses include sustainability	<p><i>Summary: There are clauses covering some, but not all types of sustainability considerations (see sub- indicator 3(a)) and</i></p>		Criterion partially met		Expand the use of sustainability

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considerations, where appropriate.	<p><i>there is no monitoring on how they are applied in practice. A more considered approach should be used based on specialized advice, tools and training.</i></p> <p>For instance, there are contract clauses in large value contracts that contain sustainability considerations. Such contracts are typically subject to international bidding and contain requirements related to knowledge transfer, innovation, buying local and job creation. According to audit reports, there is no information on how these sustainability considerations have been complied with by contractors because there is no monitoring system in place.</p>		There are clauses covering some, but not all types of sustainability considerations and there is no monitoring on if/how they are applied in practice and what their impact is.		criteria based on a strategic approach (see indicator 3a) and instructions to practitioners and monitor their implementation.
(i) Contract clauses provide incentives for exceeding defined performance levels and disincentives for poor performance.	<p><i>Summary: The bidding documents, consistent with the procurement regulations (PPL 2005) provide for disincentives for not meeting performance and time for delivery completion (see below excerpt from the Legal regime of public contracts DL 11/2005). However, there are not provisions for incentives for exceeding defined performance levels. PPL 2022, however, has introduced provisions for incentivizing exceeding performance level.</i></p> <p>This requirement has its basis in the legal framework as described below: A.40 DL 11/2005 Public Contracts Law Liability in terms of the performance of the public contract: 1. Both the Public Service and the entity benefiting from the contract take the responsibility to comply with their corresponding obligations and have the right to demand the same from the successful tendered. 2. In the event of non-fulfilment of the contract, imputable to the Public Service or the beneficiary, the authority who signed the contract shall take the necessary measures to remedy the situation, in as short a time limit as possible.</p>		<p>Criterion partially met</p> <p>While contract clauses include disincentives for poor performance, there are no incentives for exceeding performance under PPL 2005. The legal gap was resolved in PPL 2022.</p>		Include provisions in the public procurement regulations and bidding documents to incentivize performance. Such provisions are now included in the PPL 2022 .

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	<p>3. When there has been non-fulfilment of the contract for reasons imputable to the successful tendered, the Public Service, party to the contract, shall initiate the most appropriate judicial or extra-judicial proceedings in order to prevent or compensate for damages or losses suffered in the public interest.</p> <p>PPL 2022 (A118) introduces the concept for incentives for exceeding defined performance levels.</p>																									
<p>(j) The selection and award process is carried out effectively, efficiently and in a transparent way. *</p> <p>*Recommended quantitative indicators to substantiate assessment of sub-indicator 9(b)</p> <p>Assessment criterion (j):</p> <ul style="list-style-type: none">- average time to procure goods, works and servicesnumber of days between advertisement/solicitati on and contract signature (for each procurement method used)- average number (and %) of bids that are responsive (for each procurement method used)	<p><i>Summary: The Assessment Team was not able to assess most of the quantitative indicators on the selection and award process due to lack of access to quality and complete implementation data.</i></p> <p>The CNA data set showed some data on competition and bid submission time.</p> <p>On average 6 bids are received (the most are for NCB) and about 50% are found responsive. By category, works contracts receive the largest number of bids.</p> <p>Bid submission time is on average 51 days (slightly higher than the 45 planned).</p>	<p><i>Recommended quantitative indicators</i></p> <p><i>- average number (and %) of bids that are responsive (for each procurement method used)</i></p> <table><thead><tr><th></th><th>Bids received</th><th>Bids responsive</th></tr></thead><tbody><tr><td>Proc.Method</td><td></td><td></td></tr><tr><td>ICB</td><td>5.79</td><td>3.05</td></tr><tr><td>NCB</td><td>8.36</td><td>2.77</td></tr><tr><td>RFQ</td><td>3.25</td><td>2.50</td></tr><tr><td>RFP</td><td>6.17</td><td>2.96</td></tr><tr><td>RT</td><td>6.13</td><td>2.54</td></tr></tbody></table> <p><i>Source CNA data set</i></p>		Bids received	Bids responsive	Proc.Method			ICB	5.79	3.05	NCB	8.36	2.77	RFQ	3.25	2.50	RFP	6.17	2.96	RT	6.13	2.54	<p>Criterion not met</p> <p>In the absence of quantitative data to comprehensively and reliably evaluate the selection and award process, this criterion is characterized as “not met”.</p>		<p>Ensure the availability of data to build performance indicators to assess comprehensively the performance of the selection and award process.</p>
	Bids received	Bids responsive																								
Proc.Method																										
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*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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- share of processes that have been conducted in full compliance with publication requirements (in %) - number (and %) of successful processes (successfully awarded; failed; cancelled; awarded within defined timeframes) Source for all: Sample of procurement cases.					

9(c) Contract management

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Contracts are implemented in a timely manner. * Recommended quantitative indicator to substantiate assessment criterion (a): time overruns (in %; and average delay in days).	<p><i>Summary. There is not enough information to fully assess this indicator.</i></p> <p>The contract sample from MoPW shows an average contract implementation time of 620 days with 670 days for works (2018 data set). 66% are implemented between 1-2 years and 25% within three years. The median contract value is about USD 100,000. However, there are no statistics to substantiate how does this compare with the initial implementation time, i.e., what is the time overrun.</p> <p>Timor-Leste benefits from a Best practice guide for contract implementation management – however it is available only in English and is not applied in practice.</p>	<p>Recommended quantitative indicator (a): time overruns (in %; and average delay in days)</p> <p>There is no information regarding time overrun.</p>	<p>Criterion not met</p> <p>There is not enough information to assess the timeliness of contract implementation.</p>		<p>Collect information to assess time overrun to be able to the measure and enable the effective delivery of procurement outcomes.</p>

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<p>(b) Inspection, quality control, supervision of work and final acceptance of products is carried out. *</p> <p>Recommended quantitative indicator to substantiate assessment criterion (b): quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</p>	<p><i>Summary: lack of appropriate supervision is one of the binding constraints to good contract implementation and achieving expected outcomes.</i></p> <p>Audits underscore the fact that most of the public works are not properly supervised.</p> <p>Audit report of the infrastructure fund 2019 states that, while the works contracts financed by IFIs are supervised, among the contracts financed from the national budget only one contract was supervised by a consulting firm. None of the remaining dozens of contracts related to the <i>Estradas</i> program, which include, for example, the contracts for Urban Roads, worth more than USD 100 million, were subject to inspection.</p> <p>The responsibility for supervision lies with the Ministry of Public Works and the ADN that typically inspects and certifies works done at the time of the payment which cannot be a substitute for regular supervision. Lack of supervision impacts on the quality of contract implementation, adds to the contract implementation time as inspection disagreements reportedly account for a large share of contract implementation and delay results on the ground.</p> <p>In the data set of procurement carried out by MoPW, RFPs that are used to hire consulting firms, including supervision consultants) account for a minor share of total procurement (less than 1%).</p> <p>Infrastructure manual (p.102) recommends that supervisors be on board by the time contractors are selected and contracts signed. Further recommends that procurement planning be reinforced at the line ministry level.</p> <p>There are some gaps in the legal framework in this area (e.g., monitoring contract delivery, inspection quality control or supervision, or monitoring of contract performance clauses designed to ensure social or environmental standards) that are described under 1(i) above.</p>	<p>Recommended quantitative indicator: <i>quality-control measures and final acceptance are carried out as stipulated in the contract (in %)</i></p> <p>Statistic not available.</p>	<p>Criterion not met</p> <p>Inspection and supervision are not carried out regularly. Works contracts are typically not subject to daily supervision and most of the inspection is carried out by ADN at the payment time.</p> <p><i>This gap is allocated a red flag because strengthening inspection and supervision cannot be immediately mitigated through actions only in the public procurement system. ADN involvement is also required, and budget be made available for this purpose.</i></p>	<p>Yes</p>	<p>Improve contract planning and develop contract strategies for complex contracts to also capture supervision needs.</p> <p>The Best practice guide on contract implementation # 7 to be updated. disseminated.</p> <p>Mainstream regular supervision in the contract implementation process and provide for budget and timely selection of supervising agents.</p> <p>Develop a robust training program in contract management for both public and private sector.</p>

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<p>(c) Invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract.</p> <p>Recommended quantitative indicator to substantiate assessment criterion (c): invoices for procurement of goods, works and services are paid on time (in % of total number of invoices).</p>	<p><i>Summary: payment time is lengthy when measured from the time of invoice submission because of the certification process which does not rely on regular supervision. 83% of the private sector respondents to the MAPS survey identified delays in payment beyond the contractual terms.</i></p> <p>The internal controls/chain of authorization for payments including payment authorization – approval of the expense voucher has been delegated to the ministry level and municipalities – MOF Treasury does only the payment The Infrastructure Fund has its own treasury to facilitate prompt payment.</p> <p>However, delays are reported in payment for works contracts because of the time inspection takes in the absence of regular supervision and reportedly there are inefficiencies in the circulation of documents for approval from one authority to the other.</p> <p>The ADB construction report of Dec. 2019 mentions that based on the construction firms feedback the delays in payment of construction contracts is a major impediment. Such delays could go from 3 months up to a year in certain cases. It takes the government significant amount of time in processing the payments. As for projects financed by development partners, since most of them are paid under direct payment, the payments normally take much shorter time.</p> <p>PPL 2022 provides that payment must be 60 days after the receipt of the invoices.</p>	<p>Recommended quantitative indicator</p> <p><i>invoices for procurement of goods, works and services are paid on time (in % of total number of invoices)</i></p> <p>83% of private sector survey respondents opined that payment is not on time.</p>	<p>Criterion not met</p> <p>While payment procedures and approvals are clear, payments are lengthy largely because of the lengthy certification process which does not rely on regular supervision.</p>		<p>Strengthen supervision with positive impact on works certification time. Check the steps for payment process to streamline it and make it more effective.</p>
<p>(d) Contract amendments are reviewed, issued and published in a timely manner.*</p>	<p><i>Summary: contracts amendments are issued but not published.</i></p> <p>A deficiency signaled by the audit, is that procuring agency use amendments to contracts to avoid a new competitive process. It is noted that unit prices may be significantly higher in such amended contracts. There are not infrequent situations when</p>	<p>Recommended quantitative indicator:</p> <p><i>contract amendments (in % of total number of contracts; average increase of contract value in %)</i></p>	<p>Criterion partially met</p> <p>Amendments are frequent, and not published.</p>		<p>Best practice guide #7 on contract management to be updated and incorporated in the procuring</p>

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Recommended quantitative indicator to substantiate assessment criterion (d): contract amendments (in % of total number of contracts; average increase of contract value in %)	works are carried out without formalizing the changes through change orders/amendments.	Based on MoPW data set, over the 2018-2019 period, about 70%-80% of contracts in the date set are amended during their implementation. There are no statistics on cost overrun.			agencies' SOPs and training. Provide for amendments to be published. Collect information on cost overrun.
(e) Procurement statistics are available and a system is in place to measure and improve procurement practices.	<i>Summary: Procurement statistics to encompass the entire procurement processes are not available at the agency and national level except for some limited statistics.</i> Information from the procurement cycle is available in IFMIS/Procurement module but does not capture all TL procurement transactions and is not analyzed to generate useful statistics. Public agencies (e.g., CNA, MoPW) have their own data bases but they are not harmonized and do not communicate with the central data base in the MoF. They do not generate indicators for regular monitoring of procurement performance. There is no clear assignment on the responsibility to collect these statistics (see sub-indicator 5 (b) (f) above) and no evidence that existing information is used to improve procurement practices.		Criterion not met Consistent and reliable procurement statistics are not available. Responsibility not clearly assigned.		Develop a system to collect key procurement statistics (for instance starting with the procurement under the Infrastructure Fund). Clearly assign this responsibility (see sub-indicator 5(b)(f) above).
(f) Opportunities for direct involvement of relevant external stakeholders in public procurement are utilised. * Recommended quantitative indicator to substantiate assessment	<i>Summary: The Assessment Team was not able to identify cases of participation of civil society in the procurement process. Except for the bid opening, legislation (PPL 2005) is silent regarding the involvement of the external stakeholders in the procurement process.</i> Currently, according to the regulatory framework external stakeholders could participate in bid opening – however, there is no evidence that this is a practice. A.78 PPL 2005	<i>Recommended quantitative indicator: percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation.</i> Not identified.	Criterion is not met Stakeholders are not typically involved in the procurement cycle.		Consider including such provisions in the regulations to allow civil society participation in various stages of the procurement process starting with bid opening

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criterion (f): percentage of contracts with direct involvement of civil society: planning phase; bid/proposal opening; evaluation and contract award, as permitted; contract implementation) Source for all: Sample of procurement cases.	<p>stipulates that any person interested can attend the public act, where no interventions from those present are allowed.</p> <p>Stakeholders are not involved in the other stages of the procurement process. This deprives the public procurement of feedback from stakeholders and opportunities to improve procurement practices.</p> <p>PPL 2022: Civil society may be invited to be part of the evaluation committee in projects with significant social impact that involve resettlements (A.53 PPL 2022).</p>				to increase transparency and to allow non-state actors to monitor the procurement process.
<p>(g) The records are complete and accurate, and easily accessible in a single file.*</p> <p><i>// Minimum indicator //</i> <i>* Quantitative indicators to substantiate assessment @sub-indicator 9(c)</i> <i>Assessment criterion (g):</i> <i>- share of contracts with complete and accurate records and databases (in %) Source: Sample of procurement cases*</i></p>	<p><i>Summary: there are records but not always complete in a single file in particular when the procurement process is shared by multiple agencies.</i></p> <p>Auditors frequently note that information is incomplete, not all documents are available for audit. In particular when multiple agencies are involved like in the Infrastructure Fund operations, documents are not in one place and auditors have to handle information from multiple agencies which delays the audit process.</p>	<p><i>Minimum indicator: -share of contracts with complete and accurate records and databases (in %) Source:</i></p> <p>Information not available.</p>	<p>Criterion partially met.</p> <p>Records are available but often not accessible in a single file, in particular for those where multiple agencies are involved.</p>		Develop guidance on record management based on the latest national regulations to increase transparency and allow effective supervision by audit.

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10. The public procurement market is fully functional.

10(a) Dialogue and partnerships between public and private sector

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags	Recommendations
<p>(a) The government encourages open dialogue with the private sector. Several established and formal mechanisms are available for open dialogue through associations or other means, including a transparent and consultative process when formulating changes to the public procurement system. The dialogue follows the applicable ethics and integrity rules of the government. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(a) Assessment criterion (a): - perception of</p>	<p><i>Summary: GoTL underscores in its strategy the importance of the Government supporting the development of a strong private sector and the establishment of new businesses and industries that are essential to create jobs and enable the transition to a non-oil economy. To this end, the Government played a key role in the establishment of the Chamber of commerce whose objective is to support the development of the local industry including small and medium size enterprises. However, there is no consistent dialogue in particular there is no consultative process when public procurement laws and regulations are changed.</i></p> <p>The strategic plan 2011-2030 underscores that the development of a diversified private sector and the establishment of new businesses and industries are essential to create jobs and enable the transition to a non-oil economy. Thus, GoTL is using public procurement as a tool for job creation and the development of the private sector. The Government was also supportive of the creation of the Chamber of Commerce and Industry (CCI) in April 2010 and of its activities. http://timor-leste.gov.tl/?p=2672&n=1&lang=en created to function as a partner to carry out the Government's strategies in the area of private sector reform. The Chamber of commerce lobbied increased access by the local contractors to the public procurement market.</p> <p>While Government is using public procurement as a tool for private sector development, there are no clear formal mechanisms of interaction including transparent and consultative process in public procurement including when formulating changes to the procurement regulations.</p>		<p>Criterion partially met</p> <p>While the Government supports the private sector development through procurement and the Chamber of commerce intermediates sometimes the dialogue between the Government and the private sector, there are no regular mechanisms of interaction between the Government and the private sector including transparent and consultative process when formulating changes to the procurement regulations.</p>		<p>Create a forum for dialogue between the Government and the private sector (e.g., procurement conferences, Q&A e-platforms). Involve the private sector when formulating changes in the procurement regulations to benefit from the private sector experience and insights.</p>

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openness and effectiveness in engaging with the private sector (in % of responses). Source: Survey.					
(b) The government has programs to help build capacity among private companies, including for small businesses and training to help new entries into the public procurement marketplace.	<p><i>Summary: There are no targeted programs to build the capacity of the private sector to help them participate effectively in public procurement including to enable new entries into the public procurement marketplace.</i></p> <p>ADB survey identified the fact that local vendors have difficulty in understanding the bidding and contract documents, which prevents them from offering good bids and quality of services.</p> <p>There are initiatives by ILO in cooperation with the Government¹⁰⁷ to develop constructions companies' capacity. The Government in cooperation with the Private sector associations should also develop training opportunities in the area of public procurement to enable them to efficiently identify tender opportunities, understand the bidding documents and contractual requirements, preparing effective bids, making use of the challenge mechanism, preserving the integrity of the process.</p>		<p>Criterion not met</p> <p>There are no programs to build the capacity of the private sector in public procurement.</p>		<p>Government in cooperation with the private sector associations to create sustainable training programs to be delivered to the private sector to increase their chances to participate successfully in the public procurement market.</p>

10(b) Private sector's organization and access to the public procurement market

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flag	Recommendations
(a) The private sector is competitive, well-organized, willing and able to participate in the competition for public procurement contracts. *	<p><i>Summary: The private sector is organized in associations and is participating in public procurement in particular in the construction sector. But its capacity is relatively low compared to other firms in the region and is highly dependent on the government expenditures channeled through public procurement. There was no evidence of support provided by associations in the area of procurement with few exceptions</i></p>	<p><i>Recommended quantitative indicator</i></p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) <p>Not available.</p>	<p>Criterion partially met</p> <p>While the private sector is organized in associations and participates in the public procurement market, its capacity is weak and would benefit from</p>		<p>Given the importance of the private sector for the sustainable development of the Timor-Leste economy and the</p>

¹⁰⁷ Decent Work Country Program (DWCP) for Timor-Leste to supports the Ministry of Public Works' Directorate of National Roads Bridges and Flood Control (DNRBFC) and Municipalities, to strengthen local training institutions and build capacities within local construction companies..(ILO in Timor-Leste , 2019

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<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b)</p> <p>Assessment criterion (a):</p> <ul style="list-style-type: none"> • number of registered suppliers as a share of total number of suppliers in the country (in %) • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) • total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p>Source: E-Procurement system/Supplier Database.</p>	<p><i>(e.g., some initiative of the Chamber of commerce as spelled out below).</i></p> <p>When compared to firms in the East Asia and Pacific (EAP) region, the average firm in Timor-Leste is younger, smaller (in terms of the number of employees), less capital intensive, and has lower labor (and total factor) productivity levels¹⁰⁸. Public procurement is an important source of revenue for the private sector and local companies benefit from preferences that are meant to steer business their way and to support their development.</p> <p>The private sector is organized in about 19 associations along the area of activity of their members (construction, fish, coffee, consultants) of which about 4 are contractors' associations. The Chamber of Commerce and Industry of Timor-Leste [Câmara de Comércio e Indústria de Timor Leste (CCI-TL)] created in 2010 has the role to develop businesses capacity, provide advice, facilitate micro-companies access to assistance and training. One of the private sector associations supports the participation of women in Government contracts: (Asosiasaun Emprezarial Feto Timor-Leste (AEMTL). In 2020 there were 2,576 active suppliers (that received payments) in the IFMIS system, including 1131 fixed term consultants that supplement the civil service workforce. The total registered number of suppliers is quite high comparatively (60,610) but they include all the population of suppliers since 2001 so it is not a true reflection of the today's potential suppliers.</p> <p>The competitiveness of the public procurement marketplace and participation of local bidders depends on the nature of the tender. The local private sector is competitive in particular for works contracts. Overall, as per the sample of contracts</p>	<ul style="list-style-type: none"> • share of registered suppliers that are participants and awarded contracts (in % of total number of registered suppliers) <p><i>In 2020 there were 2,576 active vendors in the IFMIS system.</i></p> <ul style="list-style-type: none"> • total number and value of contracts awarded to domestic/foreign firms (and in % of total) <p><i>The value of the contracts awarded to domestic and foreign firms is not available in IFMIS.</i></p>	<p>more support by the associations and government.</p>	<p>importance of the public procurement for the private sector development, Government in cooperation with private sector associations may develop a framework for engaging the private sector periodically to understand its constraints and develop capacity building programs based on needs assessment. Organize events to alert and prepare the private sector for the coming business opportunities and also obtain early feedback on their interest.</p>

¹⁰⁸ World Bank 2019 Timor-Leste economic report unleashing the private sector.

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	<p>provided by CNA, the number of bids received is on average 6 of which 50% are responsive.</p> <p>Local companies actively compete in the construction sector that captures most capital expenditures. It is noted that local contractors and consulting companies are dominant both in terms of total number and value of contracts (see graph below). As expected, the average value of the contract is higher for foreign contractors USD 2 mil. and USD 306K for local contractors</p> <div><p>Contractors: foreign local 2019 %</p><table><tr><th>Category</th><th>Packages</th><th>Amount</th></tr><tr><td>Foreign</td><td>5%</td><td>32%</td></tr><tr><td>Local</td><td>95%</td><td>68%</td></tr></table></div> <div><p>Consultants in construction industry 2019</p><table><tr><th>Category</th><th>Count</th><th>Value</th></tr><tr><td>FOREIGN</td><td>11%</td><td>23%</td></tr><tr><td>LOCAL</td><td>89%</td><td>77%</td></tr></table></div> <p>2019, ADB Timor-Leste Construction Market Analysis)</p>	Category	Packages	Amount	Foreign	5%	32%	Local	95%	68%	Category	Count	Value	FOREIGN	11%	23%	LOCAL	89%	77%				
Category	Packages	Amount																					
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Local	95%	68%																					
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<p>(b) There are no major systemic constraints inhibiting private sector access to the public procurement market.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 10(b) Assessment criterion (b):</p> <p>- perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).</p> <p>Source: Survey.</p>	<p><i>Summary: There are some major systemic constraints faced by the private sector participants as laid out below.</i></p> <ul style="list-style-type: none"> Difficulty to understand the content of the bid and contract documents that follow the development partners' standards documents and are often complex relative to the size of the contract and in English, which prevents private companies from offering good quality bids.¹⁰⁹ MAPS private sector survey has revealed that that 46% took issue with the language of the bidding documents, while about 80% the respondents preferred that bidding documents be in a different language than only English, mostly Tetum. An additional hindrance are the technical specifications and scope of work that is often not clearly defined. Unclear procurement rules and unfair risk distribution: while the majority provided a positive answer, still about 40% of respondents to the MAPS private sector survey declared that procurement rules are not clear; and about 40% risks in the contracts are not fairly distributed Concerns related to the effectiveness of the dispute and fairness of sanctions mechanisms were raised by 69% and 50% respectively of the participants. Other private sector concerns as supported by the private sector survey and interviews are related to the existence of conflict of interest (see sub indicator 5d above) and the lack of trust in the complaints/appeal mechanisms (see sub indicator 14b). Access to financing: 69% of the respondents identified access to financing as a systemic constraint. pointing to 	<p><i>Recommended quantitative</i></p> <ul style="list-style-type: none"> <i>perception of firms on the appropriateness of conditions in the public procurement market (in % of responses).</i> <p><i>54% on average find there are systemic constraints with the highest scores: 83% payment and 69% access to finance and dispute resolution.</i></p>	<p>Criterion not met</p> <p>There are some major systemic constraints inhibiting private sector access to the public procurement market. They include difficulty to understand the content of the bidding documents, including technical specifications; payment delays; cumbersome access to finance; bribe requests and other factors in the business environment (e.g., political instability, cumbersome import and business regulations, electricity shortages, and low workforce skills and education levels).</p> <p><i>This gap is allocated a red flag because some of the gaps identified cannot be addressed through the procurement system as they extend beyond the public procurement systems (e.g., political instability, payment delays, access to finance, integrity issues).</i></p>	<p>Yes</p>	<p>Engage private sector to understand their constraints in order to find ways to address them and facilitate private sector companies' effective access to the public procurement market.</p>

¹⁰⁹ Asian Development Bank, 2019 Construction Market Analysis

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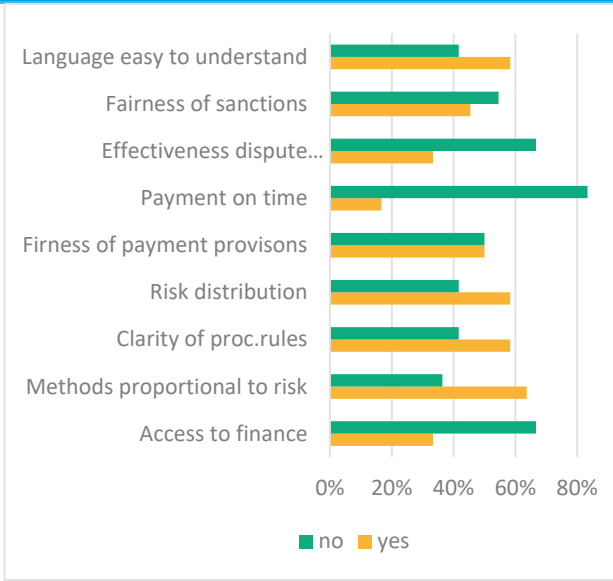
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	<p>high interest rate (15%) and the collateral required typically real estate/land. There are problems with acceding to working capital for contracts above USD 250,000 as the bank regulations are more stringent. Sometimes procuring entities accept letter of support from a commercial bank.</p> <ul style="list-style-type: none"> Delays in payment: 54% identify the payment provisions as not fair and more than 80% report delays in payments as the rule, that is more than 30 days above the contractual terms. <p>Some complained of not enough time to obtain the documentary information required. " <i>Certidao Dividas</i>" takes quite some time to obtain.</p>				

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	<div><table><caption>Quantitative Analysis Data</caption><thead><tr><th>Assessment Criteria</th><th>no (%)</th><th>yes (%)</th></tr></thead><tbody><tr><td>Language easy to understand</td><td>40</td><td>55</td></tr><tr><td>Fairness of sanctions</td><td>55</td><td>45</td></tr><tr><td>Effectiveness dispute...</td><td>65</td><td>35</td></tr><tr><td>Payment on time</td><td>80</td><td>15</td></tr><tr><td>Firness of payment provisons</td><td>50</td><td>50</td></tr><tr><td>Risk distribution</td><td>40</td><td>55</td></tr><tr><td>Clarity of proc.rules</td><td>40</td><td>55</td></tr><tr><td>Methods proportional to risk</td><td>35</td><td>60</td></tr><tr><td>Access to finance</td><td>65</td><td>35</td></tr></tbody></table><p>■ no ■ yes</p></div> <p>Corruption and bribe requests: while Timor-Leste, according to the ES Survey 2021 ranks lower in the bribery incidence than other countries in the region, there is an expectation for firms to give gifts to operate (import license, operating lease, construction permit) and receive basic services such as electrical and water connections. MAPS survey identified 64% of respondents opining that there is an expectation of gifts to be awarded contracts.</p> <p>Other factors in the procurement environment include political instability cited as the highest constraint for the private sector in general. In addition, poor electricity and water services, cumbersome import and business regulations,</p>	Assessment Criteria	no (%)	yes (%)	Language easy to understand	40	55	Fairness of sanctions	55	45	Effectiveness dispute...	65	35	Payment on time	80	15	Firness of payment provisons	50	50	Risk distribution	40	55	Clarity of proc.rules	40	55	Methods proportional to risk	35	60	Access to finance	65	35				
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	and low workforce skills and education levels have all been associated with weaker firm performance ¹¹⁰ .				

10(c) Key sectors and sector strategies

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) Key sectors associated with the public procurement market are identified by the government.	<p><i>Summary: two sectors that are high on the Government agenda benefit from strengthened procurement arrangements: infrastructure and health sectors.</i></p> <p>The key sectors that are at the centre of Timor-Leste's Strategic Development Plan (SDP) 2011-2030¹¹¹ include infrastructure and human capital development, including education and health. The link procurement and infrastructure plays out within the framework of the infrastructure fund, an autonomous fund, endowed with legal personality, and administrative, financial, and patrimonial autonomy. CNA is the key procurer, SGP is in charge of PIM process and ADN is in charge of the oversight of the technical quality in the bidding and contract implementation process. Procurement of pharmaceutical and health goods was strengthened through the creation of SAMES, whose core function is the procurement, storage and distribution of pharmaceuticals, consumables, medical equipment for the health facilities of Timor-Leste. It is a public institution that enjoys a special procurement regime and financial, administrative and patrimonial autonomy.</p>		Criterion met		
(b) Risks associated with certain sectors and	<p><i>Summary: Infrastructure and health have been subject to sporadic/limited assessments in the area of procurement. A</i></p>		Criterion partially met		The procurement authority in

¹¹⁰ World Bank 2019 Timor-Leste economic report unleashing the private sector.

¹¹¹ The Timor-Leste's Strategic Development Plan (SDP) 2011-2030 was prepared based on result of community-wide consultations in all 65 sub-districts across Timor-Leste. The SDP is an integrated package of strategic policies to be implemented in the short term (1-5 years), in the medium term (5-10 years), and in the long term (10-20 years).

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
opportunities to influence sector markets are assessed by the government, and sector market participants are engaged in support of procurement policy objectives.	<p><i>more consistent approach in assessing procurement systemic risks and opportunities would enable improved procurement outcomes in these strategic sectors.</i></p> <p>Currently there is an ad hoc treatment of procurement in these sectors without a comprehensive and consistent assessment of risks and opportunities that influence the sectors' market and adopting procurement actions specific to these sectors to address/and take advantage of identified risks and opportunities. Procurement aspects were addressed in some detail in the 2020 Infrastructure Fund manual and SAMES carried out a procurement study in 2015. There are other studies by Development Partners that address these sectors such as ADB in 2019. Construction study and the WB PERs that highlighted some procurement issues in these sectors in the context of the broader public expenditure review. A more deliberate/sectoral approach should be used in these priority areas to assess systemic risks and opportunities to improve procurement outcomes and better support the sectors' development objectives.</p>		The approach to assessing systemic risks and opportunities in these markets is not consistent (there are no regular evaluations) to effectively inform policy decisions.		cooperation with the sector authority to evaluate periodically the risks and opportunities in the priority sectors for a more targeted approach and results. Based on this evaluation, elaborate action plans with performance indicators that are monitored and publicized.

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Pillar IV. Accountability, Integrity and Transparency of the Public Procurement System

11. Transparency and civil society engagement foster integrity in public procurement.

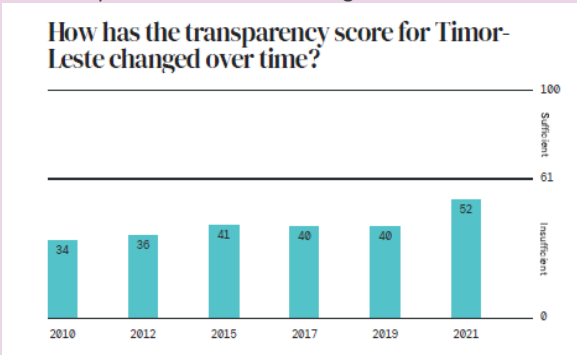
11(a) Enabling environment for public consultation and monitoring

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags?	Recommendations
(a) A transparent and consultative process is followed when formulating changes to the public procurement system.	<p><i>Summary: While there are some legal provisions allowing citizens' participations and there are examples of citizens/NGOs providing feedback on draft laws (land, mining, budget, anti-corruption) there is no consultative mechanism followed when formulating changes to the public procurement system.</i></p> <p>The process of drafting the new PPL 2022 was based on the broad vision formulated at the MoF leadership and consists of the following steps: the Legal Department engages procuring entities mainly the CNA, conducts research, consults international studies, identifies priorities and drafts a proposal submitted to the Council of Ministers for approval; subsequently, the Legal Department prepares the new policy in consultation with the legal advisors from the ministries.</p> <p>The civil society feedback confirmed that there are no consultations regarding public procurement policy and overall, besides limited Parliamentary hearings civil society is not part of the budget preparation and oversight processes. During the budget preparation sporadically, civil society may provide unsolicited feed back to the Government and Parliament based on draft documents they may obtain upon request typically based on personal connections. This is more likely to happen for laws that are submitted to the Parliament and less, or at all for Decree Laws that are approved by the Council of Ministers, as is the case of the Public Procurement Law.</p>		<p>Criterion not met.</p> <p>CSOs feedback on draft laws is sporadic and there is no consistent transparent and consultative mechanism followed when formulating changes to the public procurement system.</p>		<p>Create a mechanism for public consultation to solicit feedback from the civil society/private sector in developing procurement legislation and formulating changes to it.</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>Metrics for participation and transparency in Timor-Leste</p> <p>The Open budget survey¹¹² measures the public access to information on how the central government raises and spends public resources. The level of transparency and public participation is insufficient as per Open Budget Survey as further described.</p> <p>Transparency score: While the country has recorded a significant improvement since 2010, Timor-Leste has a transparency score of 52 (out of 100) which is considered insufficient. A transparency score of 61 or above indicates a country is likely publishing enough material to support informed public debate on the budget.</p>  <p>OBS2021</p> <p>Public participation</p> <p>The OBS also assesses the formal opportunities offered to the public for meaningful participation in the different stages of the budget process, and scores each country on a scale from 0 to 100. As illustrated in the graph below, Timor-Leste scores</p>				

¹¹² **The Open Budget Survey (OBS)** is a research instrument that uses internationally accepted criteria to assess public access to central government budget information; formal opportunities for the public to participate in the national budget process; and the role of budget oversight institutions such as the legislature and auditor in the budget process. It assesses the online availability, timeliness, and comprehensiveness of eight key budget documents using 109 equally weighted indicators and scores each country on a scale of 0 to 100.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations																				
	<p>50% of the global average and ranks relatively lower among the countries in the region.</p> <p>For the E-Participation Index (EPI),¹¹³ the score is rather low because the Government of Timor-Leste started e-participation initiatives only in 2014, the 2018 EPI score is 0.27, based on a scale of 0 (worst) to 1 (best)¹¹⁴.</p> <div><p>Public participation in Timor-Leste compared to others</p><table><thead><tr><th>Country</th><th>Score</th></tr></thead><tbody><tr><td>Global Average</td><td>14</td></tr><tr><td>Philippines</td><td>35</td></tr><tr><td>Malaysia</td><td>26</td></tr><tr><td>Indonesia</td><td>24</td></tr><tr><td>Vietnam</td><td>17</td></tr><tr><td>Thailand</td><td>11</td></tr><tr><td>Timor-Leste</td><td>7</td></tr><tr><td>Cambodia</td><td>0</td></tr><tr><td>Myanmar</td><td>0</td></tr></tbody></table></div>	Country	Score	Global Average	14	Philippines	35	Malaysia	26	Indonesia	24	Vietnam	17	Thailand	11	Timor-Leste	7	Cambodia	0	Myanmar	0				
Country	Score																								
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Philippines	35																								
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Vietnam	17																								
Thailand	11																								
Timor-Leste	7																								
Cambodia	0																								
Myanmar	0																								

¹¹³ EPI is a supplementary index to the United Nations E-Government Survey to assess the extent to which governments are engaging its citizens through ICTs in policy, decision-making, and service design and delivery so as to make it participatory, inclusive and deliberative

¹¹⁴ The Economic and Social Commission for Asia and the Pacific (ESCAP) Regulatory Policies and ICT Trends: Insights from Timor-Leste Asia-Pacific Information Superhighway (AP-IS) Working Paper Series Nov 2019, p24.

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	The open budget survey indices for Timor-Leste: <i>source:</i> Open budget survey 2021 https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste				
(b) Programmes are in place to build the capacity of relevant stakeholders to understand, monitor and improve public procurement.	<i>Summary: There are no programs in place to build relevant stakeholders' capacity to understand, monitor and improve public procurement.</i>		Criterion not met There are no programs in place to build relevant stakeholders' capacity to understand, monitor and improve public procurement.		Develop and include in the capacity building agenda training programs for relevant stakeholders, so they can exercise effective oversight of public procurement.
(c) There is ample evidence that the government takes into account the input, comments and feedback received from civil society.	<i>Summary: There are no cases identified for civil society participation in the regulatory process in the area of public procurement.</i>		Criterion not met Based on the information available, the Assessment Team concluded that there is no civil society consultation in the public procurement regulatory process.		Develop a transparent process to collect comments from the civil society and identify how they have been incorporated in the final documents.

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11(b) Adequate and timely access to information by the public

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Requirements in combination with actual practices ensure that all stakeholders have adequate and timely access to information as a precondition for effective participation.	<p><i>Summary: There are legal requirements to ensure publicity as per the PPL and Anti-corruption law. The e-procurement portal contains information on legal and regulatory framework albeit not complete, tender notifications and awards (also published in journals). At the same time, bidding documents are not uploaded. Awards in the e-portal are not accessible to the public and those published are not complete as they do not provide the reasons for selecting the successful bidder and the time frame for lodging complaints, as per the regulations. Finally, there is no public information available on procurement plans, data on resolution of complaints, contract implementation information and annual procurement statistics.</i></p> <p>A. 7 PPL 2005 refers to the principles of publicity regarding tendering opportunities and all procedures related to public procurement [see 1(c)a)].</p> <p>A.7 Anti-corruption law 7/2020 states that procurement and public contracting are based on the principles of publicity and transparency, which aim to discourage corrupt practices and allow for a social scrutiny of public agents involved in public procurement services and the agents they are contracting. Advertising and transparency take place both in the procurement phase and in the contract execution phase</p>		<p>Criterion partially met</p> <p>While there are publicity requirements and Timor-Leste has an electronic portal. Information is divided between the paper media and the e-portal, is not complete and user friendly which hinders adequate and timely access to information by stakeholders (private sector and civil society) as a pre-condition of effective participation.</p>		<p>Improve the e-procurement portal – completeness, accuracy, timeliness, downloadability, searchability (by name or word, not just id number), links to documents (which should contain text, not just images).</p>

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11(c) Direct engagement of civil society

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) The legal/regulatory and policy framework allows citizens to participate in the following phases of a procurement process, as appropriate: <ul style="list-style-type: none"> • the planning phase (consultation) • bid/proposal opening (observation) • evaluation and contract award (observation), when appropriate, according to local law • contract management and completion (monitoring). 	<p><i>Summary: With one exception (that is: bid opening), participation of civil society is not allowed in other stages of the procurement process under the PPL2005.</i></p> <p>The legal/regulatory and policy framework is stating that “any person interested can attend the public act” of opening the envelopes but is silent on the option of allowing citizens to participate in the other phases of a procurement process: the planning phase (consultation); evaluation and contract award (observation), when appropriate, according to local law; contract management and completion (monitoring).</p> <p>A.56 PPL 2005 Stages of competitive procedure includes a public ceremony for the opening of bid envelopes. A.57 PPL 2005 provides that the opening of the bid is the step of the procedure where the Public Service summons, through an announcement, all of the potential suppliers, with the intention of their participation in the provisioning operation. A.78 PPL 2005 Public ceremony for opening the envelope provides that any person interested can attend and observe the public ceremony but they are not permitted to speak.</p> <p>PPL 2022 expands on the participation of civil society in contracts of strategic interest, high value or great social impact, namely in terms of relocating people.</p>		<p>Criterion partially met</p> <p>Participation of civil society is not allowed in various stages of the procurement process except for bid opening. There are no actual cases identified of civil society participating in bid opening.</p>		Consider enabling the participation of citizens in other stages of the procurement process.
(b) There is ample evidence for direct participation of citizens in procurement	<p><i>There is no evidence for direct participation of citizens in procurement processes through consultation, observation and monitoring.</i></p>		<p>Criterion not met</p> <p>There is no evidence for direct participation of citizens in</p>		Develop mechanisms for citizens' consultation in

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processes through consultation, observation and monitoring.			procurement processes through consultation, observation and monitoring		the area of public procurement to increase transparency and oversight by non-state actors.
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12. The country has effective control audit systems.

12(a) Legal framework, organization and procedures of the control system

The system in the country provides for:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) laws and regulations that establish a comprehensive control framework, including internal controls, internal audits, external audits and oversight by legal bodies	<p><i>Summary: Timor-Leste has developed a comprehensive control framework including internal controls, internal audits, external audit and oversight by legal bodies but does not effectively cover at this stage the needs of Timor-Leste Government including in the area of public procurement.</i></p> <p>Internal controls and audit An internal control/audit framework has been established and it is being developed. Internal control arrangements are described in the MoF Organic Law, in the organic laws approved for each ministry and the annual budget execution decrees. According to PEFA they are further detailed in the GRP FreeBalance system and the Treasury Manual that provide a specific set of guidelines and instructions to implement the internal control procedures relating to the budget cycle.</p> <p>A.39 MoF Organic Law provides that the General Inspection Office, Gabinete de Inspeção-Geral (GIG) is in charge of conducting the internal audit in all organic units legally dependent on MoF, and other institutions as to their financial and assets management activities. GIG is also charged with</p>		<p>Criterion partially met</p> <p>While Timor-Leste has established a comprehensive control framework it is still weak in particular in the area of internal controls.</p>		Strengthen the oversight framework including by implementing the PFM strategy.

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	<p>defining internal audit, inspection procedure. GIG reports to the Minister the results of the activities of audit or inspection provided.</p> <p>The Inspectorate-General of the State (IEG) was established with inspection and auditing functions. The IEG reports directly to the Prime Minister. Its expertise extends over internal control of central services and deconcentrated public entities (A.13). However, it has essentially been focused on inspections and investigations. Contact with other institutions also mandated to perform internal audit functions has been limited.</p> <p>In spite of the progress, the internal control and audit framework, according to PEFA, is incomplete. It is framed in a weak institutional setting where functions, roles and responsibilities have been established in a fragmented manner and resources and capacity are limited. PFM strategy is yet to be fully implemented. It includes: the passage of a new Internal control law, professionalization of the internal control function, developing a manual with a risk assessment methodology and Code of ethics, rolling out of an internal training certification. PEFA concludes that, the internal and external audit functions provided by the oversight institutions cannot validate the effective and efficient delivery of budget outcomes.</p> <p>External audit Law 9/2011 Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court (<i>Orgânica da Câmara de Contas do Tribunal Superior Administrativo, Fiscal e de Contas LOCC</i>) establishes the Chamber of Accounts/Camara de Contas, (CdC). As such, the Chamber of Accounts has the powers to scrutinize the execution of the State Budget and the annual financial statements (in coordination with the National Parliament). The Chamber of</p>				

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	<p>Accounts is currently operating within the Court of Appeals (<i>Tribunal de Recurso</i>), and its President is also the President of the Court of Appeals. CdC performs oversight over the financial activities of the state using four modalities of financial oversight: audit over the General State Account (<i>Conta Geral do Estado</i>/CGE, further called CGE audit); Prior control/review (<i>fiscalização previa</i>); Concurrent control/review (<i>fiscalização concomitante</i>); Successive control/ review: (<i>fiscalização sucessiva</i>). See more details on their content (including procurement) in 12(a)(d) below. Audit reports once finalized are submitted to Parliament, Prime Minister and National Prosecutor.</p> <p><u>The Parliament</u></p> <p>The National Parliament scrutinizes the Government's policies and oversees the State Budget execution. According to the National Parliament's internal regulation (approved by Law No.15 of 2009 ("Law 15/2009")¹¹⁵ has six permanent special committees – Commission C is responsible for subjects related the economy, finances, and anti-corruption – and reviews and provides technical feedback to the budget proposal. The Government has a legal obligation to present to the National Parliament quarterly reports on the budget execution (including revenue and expenditure) as well as an obligation to present audited financial statements after the closing of the fiscal year (PEFA 2018).</p>				
(b) internal control/audit mechanisms and functions that ensure appropriate oversight of	<p><i>Summary: While the internal control function is increasingly established in government agencies, this function is not effectively carried out because of limited resources and difficulty to retain qualified staff. Furthermore, there is no guidance on procurement audit in an internal audit manual</i></p>		<p>Criterion not met</p> <p>Internal audit functions are not effectively carried out because of limited resources and difficulty to</p>		Internal audit function needs to be strengthened overall including the ability to

¹¹⁵ Law of National Parliament No.15 of 2009 Regulation of National Parliament of Democratic Republic of Timor-Leste [Regimento do Parlamento Nacional da Republica Democratica de Timor-Leste] Jornal da República https://mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no40.pdf as amended by Law of National Parliament No.1 of 2016. Jornal da República https://mj.gov.tl/jornal/public/docs/2016/serie_1/SERIE_I_NO_18.pdf

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procurement, including reporting to management on compliance, effectiveness and efficiency of procurement operations	<p>or other instructions to support an effective procurement review at the national level.</p> <p>There are legal requirements on procurement oversight including, more recently, in the Anti-corruption law 7/2020 A7. It requires that the legal regime for supply and contracts should establish an <u>effective audit system of public procurement</u>, as well as a clear and effective sanctions system in the event of non-compliance with the rules and procedures.</p> <p>GIG is conducting internal audits that cover procurement and contract management, but they are generally limited to MoF activities. They do not secure a consistent reporting to the management of the on compliance and effectiveness of the procurement operations</p> <p>MoF is developing annually an audit program, but plans are adjusted to limited capacity and resources constraints (GIG is staffed with 8 auditors of which 2 are certified and turnover is high). As a result, according to PEFA, the program is very limited, and the circulation of the audit reports has very little impact.</p> <p>Because of resources constraints, the level of implementation of the annual plan is on average 43% (see table below with the level of implementation broken down per categories of activities).</p> <table><tr><th>Activities</th><th>Planned</th><th>Actual</th><th>% fulfilment</th></tr><tr><td>Audits</td><td>4</td><td>1</td><td>25%</td></tr><tr><td>Inspections</td><td>6</td><td>2</td><td>33%</td></tr><tr><td>Investigations</td><td>3</td><td>2</td><td>67%</td></tr><tr><td>Follow up audit</td><td>1</td><td>1</td><td>100%</td></tr></table>	Activities	Planned	Actual	% fulfilment	Audits	4	1	25%	Inspections	6	2	33%	Investigations	3	2	67%	Follow up audit	1	1	100%		retain qualified staff. Furthermore, there is no guidance on procurement audit in an internal audit manual or other instruction to support a comprehensive procurement review at the national level.		attract and retain qualified staff. As per PFM strategy, the preparation of a manual would support improved audit. The Manual to include procurement audit guidance.
Activities	Planned	Actual	% fulfilment																						
Audits	4	1	25%																						
Inspections	6	2	33%																						
Investigations	3	2	67%																						
Follow up audit	1	1	100%																						

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	Total	14	6	43%				
	Regarding reporting of audit findings, PEFA underscores that the MoF Internal Audit Office reports quarterly to MoF's management on the progress of its activities and the implementation of its annual action plan. Audit reports are shared with the auditees.							
(c) internal control mechanisms that ensure a proper balance between timely and efficient decision-making and adequate risk mitigation	<p><i>Summary: The internal control mechanism, including for procurement) is not effective. While it has been established in many government institutions it is not fully operational. PEFA found weaknesses in the risk management system since risk identification, assessment, and monitoring are not yet supported by a generic risk management methodology, adopted broadly by institutions responsible for internal control across the government. This area still needs further harmonization and improvement. PEFA recommended that risk management be strengthened in an updated Manual, and this was not yet accomplished.</i></p> <p>The internal audit function is partially in place, but not effective. The GAI/GIG in MoF has jurisdiction over all public institutions, but it lacks a relevant and formal regulatory framework and resources to operate effectively. Inspection departments under each ministry perform some ex-post compliance-related checks under the authority of the respective minister. The lack of standards and training reduces the effectiveness of the internal audit function. Planning and execution of audit plans is limited by resources constraints and are not followed up in a consistent and effective manner. Response to internal audit recommendations is poor. (PEFA 2018).</p>					Criterion not met <p>The internal control lacks improved instructions in the area of risk management and procurement.</p>		Internal audit function needs to be strengthened overall as per PFM strategy, including in the area of procurement. The risk management methodology, including for procurement, needs to be strengthened ideally in an internal audit manual.
(d) independent external audits provided by the country's Supreme Audit	<p><i>Summary: The Chamber of Accounts/CdC's audits have a significant public procurement component as detailed below, and risk is a factor in reviewing the public procurement activities.</i></p>					Criterion partially met <p>While external audit has an important procurement</p>		Strengthen the external audit by implementing the PFM strategy.

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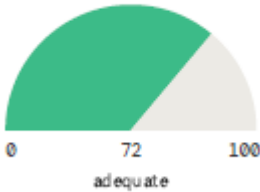
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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
Institution (SAI) that ensure appropriate oversight of the procurement function based on periodic risk assessments and controls tailored to risk management	<p>PEFA states that the role of the <i>Camara de Contas</i> (CdC) in the oversight of government spending is essential and even if there is no audit opinion, covers all central agencies and line ministries' budget execution, including RAEOA-ZEESM. PEFA also underscores that, while by law, the CdC operates independently from the executive (with respect to procedures for the planning of audit engagements, arrangements for publicizing reports, and the approval and execution of its budget), appointment and removal of the Head of the CdC by the President – and not by the Parliament – raises an issue of political independence.</p> <p>The oversight is exercised by the CdC though the following four oversight modalities:</p> <ul style="list-style-type: none"> • The CGE audit -audit of the Government Annual Financial Statements. • Prior control/review/fiscalização prévia VISTO – including in the area of procurement, prior review of contracts above USD 5 mil., including subsequent addenda; contracts whose global amount exceeds USD 5 mil. even if the original was not subject to prior review – (CdC annual report 2019, 2020). The threshold seems high for Timor-Leste conditions in particular as relates to direct contracting. • Concurrent control/review (<i>fiscalização concomitante</i>), including, in the area of procurement review of contracts that are not subject to prior review). • Successive control/review (<i>fiscalização sucessiva</i>). The “successive control” carried out through audits is characterized by focusing on the entity's activity carried out in the current year or on the activity carried out in the previous year or years. Successive 		component, key shortcomings relate to: (i) the lack of full independence of the external audit function; (ii) the performance audit is in the early stage; (iii) the CdC prior review threshold for direct contracting seems high for Timor-Leste conditions – if not compensated by other forms of risk mitigation.		Assess the appropriateness of the prior review threshold in particular in relation to direct contracting and make an informed based decision on the optimal approach.

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	<p>audits may be: i) Financial Audits, ii) Compliance Audits, iii) Audits Oriented to specific projects and iv) Operational or Results Audit (Annual report 2020). Most of the audits contain procurement findings and recommendations.</p> <p>Performance audits: CdC, while including elements of performance audit in the external audits, has not yet extended its activities performance audits (PEFA PI-8).</p> <p>Procurement in the annual report to the Parliament</p> <ul style="list-style-type: none"> CdC submits annually for Parliament approval the Report and opinion on State General Account Relatório e Parecer sobre a Conta Geral do Estado - further called RPCGE. The report contains some information on procurement prior review, status and methods used under the infrastructure fund, that accounts for the largest share of capital expenditures. <p>.</p> <p>The “audit oversight” score under the Open Budget Survey (OBS) is adequate and shows progress from 2019 when it scored 67.</p> <p>Audit oversight</p> 				

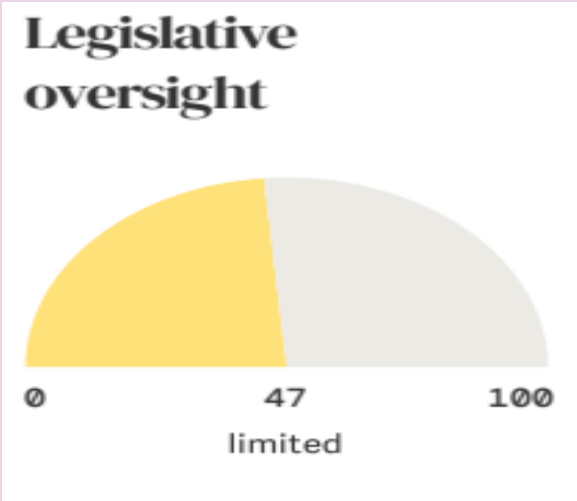
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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	Weak -40; limited 41-60; adequate 61-100 Open Budget Survey 2021 https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste				
(e) review of audit reports provided by the SAI and determination of appropriate actions by the legislature (or other body responsible for public finance governance)	<p><i>Summary: All audit reports are sent to the Parliament that can also request CdC to conduct audits in areas of interest. RPCGE (the annual report of the Government financial accounts) contains information on procurement under the Infrastructure Fund and post review and sometimes makes recommendations on systemic procurement issues.</i></p> <p>The RPCGE that is submitted annually to the Parliament includes information on the procurement status under the Infrastructure Fund and sometimes procurement related recommendations.</p> <p>According to PEFA, the ex-post budget scrutiny is supported by a relatively effective oversight performance between the external audit function and Parliament. However, the legislative scrutiny of audit reports is rated with a C (PI-31) because of delays in the legislative scrutiny and the fact that that the Commission C hearings are not regular while their reports are not accessible to the public.</p> <p>Law 9/2011 Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court/CHAPTER III/ JÚRISDICTION/A.12</p> <p># 1 The Chamber of Accounts shall be especially responsible for: a) drawing up opinions on the General Accounts of the State.</p> <p># 2 The National Parliament each year can ask for the audit of a specific entity indicating the grounds for the request.</p> <p>#4 The accounts referred to in subparagraph a) of paragraph 1 shall be approved by National Parliament which shall forward the corresponding opinions issued by the Chamber of</p>		<p>Criterion partially met</p> <p>PEFA identifies weaknesses (e.g., regularity of hearings of the audit findings and transparency of the legislative scrutiny of the audit reports) that may impact the procurement oversight. The annual CdC report (that is submitted for Parliament review and approval) has not strong procurement recommendations (less so than in the previous years).</p>		<p>Strengthen legislative oversight by implementing the PFM strategy. Consider strengthening the procurement content of the RPCGE to inform the legislator on the systemic issues identified, recommendations made and follow up by the respective government agencies.</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>Accounts on possible financial accountability to the Public Prosecutor's Office.</p> <p>The Open Budget Survey rates the legislative oversight as "limited" (47). However, it shows progress versus 2019 when it scored only 39.</p>  <p>Weak -40; limited 41-60; adequate 61-100 Open Budget Survey 2021 https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste</p>				
(f) clear mechanisms to ensure that there is follow-up on the respective findings.	<p><i>Summary: there are follow up requirements and mechanisms, but they do not support consistent follow up and there is no information on the outcomes (except for the annual financial audit CGE).</i></p> <p>The follow up mechanisms are described below:</p>		<p>Criterion partially met</p> <p>There are follow up requirements and mechanism, but they do not support consistent and transparent follow up.</p>		<p>Create systems to allow for consistent and transparent follow up and for the consolidation</p>

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	<p>Internal audits follow up: According to PEFA, the internal regulations related to follow up on internal audit findings in MoF recommend two follow-up missions within a year interval. When an internal audit exercise is performed in support of a public institution outside MoF, the Office of Internal Audit shares the follow-up matrix with their counterpart but does not conduct a follow-up mission. The responsibility to follow-up on recommendation implementation of joint internal audits is transferred to the internal control body within the audited institution.</p> <p>For external audits, the audited institution is instructed by CdC to provide a written report on the actions undertaken to address the audit findings and recommendations, with evidence and supporting documents within 6 months after the completion of the report. The follow up on operational audits recommendations (that normally include procurement in their scope) is also achieved through follow up audits: successive control/review (<i>fiscalização sucessiva</i>).</p>				of the records. A dashboard can be established to visualize the reporting for each agency in order to take appropriate actions and have a global view of the level of enforcement at the country level.

12(b) Coordination of controls and audits of public procurement

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) There are written procedures that state requirements for internal controls, ideally in an internal control manual.	<p><i>Summary: Written procedures are scattered in various sources as detailed below. PFM strategy aims to consolidate instructions in an Internal Control Manual with code of ethics and risk methodology has not yet been implemented.</i></p> <p>PEFA refers to the various sources of guidance for conducting internal audits. There are Standard Operating Procedures and work instruction prepared by MoF and Internal Audit Guidelines prepared by the Internal Audit Office that detail</p>		<p>Criteria partially met</p> <p>There are standard operating procedures for internal controls/audit but there is no manual to guide the audit including for public procurement.</p>		MoF/public agencies to prepare internal audit manual based on risk, as recommended by PEFA and RPCGE. This manual to contain a

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	the roles and responsibilities for a range of PFM processes (e.g., commitment, payment verification, recording process). The GRP FreeBalance system and the Treasury manual provide the specific set of guidelines and instructions to implement the internal control procedures relating to the budget cycle. All Treasury's responsibilities and activities are further detailed in the Treasury Manual, drafted in 2017, for the functioning of DG Treasury and also directorates and finance departments in line ministries, Autonomous Public Agencies (APAs) and municipalities. The PFM objective of developing an Internal Control Manual with code of ethics and risk methodology is yet to be implemented.				procurement component to guide auditors in conducting procurement audit.
(b) There are written standards and procedures (e.g., a manual) for conducting procurement audits (both on compliance and performance) to facilitate coordinated and mutually reinforcing auditing.	<p><i>Summary: While there are provisions in LOCC for coordination and consultation between the internal and external audits, there are no written standards, manuals for conducting procurement audit to ensure coordinated and mutual reinforcing auditing. There are recent examples however, of meetings between the oversight agencies as reported by CdC (Annual report 2022).</i></p> <p>Coordination among oversight agencies The legal framework provides for coordination among oversight agencies for instance A. 10 of the LOCC refers to Cooperation of CdC with internal auditing bodies. The duty to cooperate with the Chamber of Accounts encompasses: a) Notification to the Chamber of Auditors of their annual and multiannual programmes of activities and corresponding activity reports. b) The submission of the reports of its actions, whenever they contain matters of interest for the work of the Chamber of Accounts, such as in situations resulting in possible financial offences with indications founded on facts, period of time, full identification of those responsible, rules broken, amounts involved, the right to institutional and individual adversary system.</p>		<p>Criterion partially met</p> <p>While there are requirements in the law and some recent examples of cooperation, there are no manuals that incorporate guidance on procurement audit and no written standards or manuals to facilitate coordinated and mutually reinforcing auditing.</p>		Prepare manuals to include guidance on procurement audit and to address coordination aspects including in the area of public procurement. Create a framework for consistent exchanges of information as required under the LOCC.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>However, according to the RPCGE– over the last three years 2018-2020 the internal control units did not comply with this requirement.</p> <p>Meetings with other oversight agencies to discuss the action plan and other topics of mutual interest to achieve mutual reinforcing auditing and oversight (CAC, IGE, sectoral inspection)– took place for the first time in 2021 as noted into the Annual report published in 2022.</p> <p>Finally, there are cross learning initiatives among oversight institutions (see 12(d)(a) which may support the coordination agenda. The 2021 report also identifies that capacity building actions were organized by CdC with general inspectorates and internal audit units of ministries and other public institutions.</p>				
<p>(c) There is evidence that internal or external audits are carried out at least annually and that other established written standards are complied with. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(b) Assessment criterion (c): - number of specialized procurement audits carried out compared to total number of audits</p>	<p>Summary: <i>Internal audit does not have the capacity to conduct annual audits. As regards external audit (CGE) except for the annual financial audit, the other audits (non-CGE) are carried out on a need and risk basis according to the CdC audit plan.</i></p> <p>Internal audit The MoF Office of internal audit does not have the capacity to carry regular audits to appropriately cover organic units legally dependent of MoF as per its mandate. The work program 2017-21 covers mostly MoF including procurement and contract management,</p> <p>External audit: As regards external audit the periodicity depends on the type of audit. Financial audit is carried out annually and has a procurement component (e.g., reports on procurement prior review by CdC, procurement under Infrastructure fund). The</p>	<p><i>Recommended quantitative indicator:</i> - number of specialized procurement audits carried out compared to total number of audits (in %). 70 percent of external audits (concurrent and successive audits) focus on procurement. - share of procurement performance audits carried out (in % of total number of procurement audits) No specific procurement performance audits were identified.</p>	<p>Criterion partially met</p> <p>Except for the financial audit carried out annually by CdC other external audits are conducted on a need basis. Internal audit does not have the resources to exercise its oversight over the public units that are legally dependent of MoF according to its mandate.</p>		<p>The Office of internal audit in MoF should strengthen its capacity, consistent with the PFM Strategy, to be able to carry out internal audits in all public institutions dependent of MoF, including in the area of public procurement.</p>

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(in %). - share of procurement performance audits carried out (in % of total number of procurement audits). Source: Ministry of Finance/Supreme Audit Institution.	other audits are carried out on a need basis according to the CdC audit plan as laid out in the annual Action Plan published on the CdC website. While audits may not cover exclusively procurement or be called "procurement audits" most of the audit reports over the last 3 years (70% of the concurrent and successive audits) have in their scope procurement).				
(d) Clear and reliable reporting lines to relevant oversight bodies exist.	<p><i>Summary: There are requirements to report irregularities to the competent authorities of breaches of laws and regulations that states the obligations to report, and the reporting levels as spelled out below.</i></p> <ul style="list-style-type: none"> - Supervisors/auditors, board of supervisors of commercial companies to report cases of corruption they may come across while exercising the supervisory functions and not doing so is construed as a criminal offense (Anti-corruption law 7/2020 A 23). - Whenever reports on auditing activities undertaken by the Chamber of Auditors, and reports on internal control activities, reveal facts consisting of financial accountability, the corresponding cases shall be forwarded to the Public Prosecutor's Office (A. 42 LOCC) - The Parliament submits cases reported by CdC to the PGR (A 12 LOOC states that the CGE Audit shall be approved by National Parliament which shall forward the corresponding opinions issued by the Chamber of Accounts on possible financial accountability to the Public Prosecutor's Office. (A. 67 LOOC). - Legal proceedings may be requested by PGR, by the government agency or internal controls (subsidiary right) A. 67 LOOC. The Audit reports result in 		Criterion met		

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	<p>registered complaints to the court as detailed by PEFA:</p> <p>The Public Prosecutor (LOCC A. 23/2 and 40/5) can decide to register a complaint to the court based on the audit findings (A. 67). Government agencies responsible for supervising other public entities may also do so on the basis of the CdC findings. Criminal offenses are addressed to the criminal court, while compliance offenses are addressed to the CdC. The relevant jurisdiction then decides if the complaint is substantiated and should be prosecuted (PEFA p 150).</p>				

12(c) Enforcement and follow-up on findings and recommendations

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) Recommendations are responded to and implemented within the time frames established in the law.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(c)</p> <p>Assessment criterion (a):</p> <p>- Share of internal and external audit recommendations implemented within the time frames</p>	<p><i>Summary: except for the CGE (financial audit) there are no records on the degree of implementation of the other audits (internal and external) that have significant procurement content. Even for CGE audit the degree of implementation is low.</i></p> <p>Implementation and response to the external audit recommendations</p> <p>While the audit activities follow a formal process, the actual implementation by auditees on recommendations is relatively weak. RPCGE for 2020 showed 8% implemented (2 actions) and 38% partially implemented.</p> <p>PEFA 2018 refers to an average implementation ratio of 12 percent year-on-year. Recommendations without implementation are carried over from one year to another without consequence.</p> <p>Some of the RPCGE recommendations (2017-18) “under implementation” were procurement related and pointed to</p>	<p><i>Recommended quantitative indicator</i></p> <p><i>Share of internal and external audit recommendations implemented within the time frames established in the law (in %).</i></p> <p>External audit:</p> <p>CGE audit: 8%: 2 out of 24 completed and 38% partially completed- (source: RPCGE 2020, published 2021).</p> <p>There is no aggregated statistics on the degree of implementation of the non-CGE audit.</p>	<p>Criterion not met</p> <p>The follow up by the executive on auditors’ recommendations is weak.</p>		<p>Ensure systematic monitoring of the implementation of the recommendations of the operational audits including those with procurement content. Create consolidated records and publish performance statistics.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis / conclusions</u> (describing any substantial gaps)	Red flags ?	Recommendations															
established in the law (in %). Source: Ministry of Finance/Supreme Audit Institution.	<p>the need to better enforce the procurement and contracts regimes.</p> <p>The table and graph below show the implementation status of CdC CGE audit recommendations for 2019 – reported in 2020.</p> <table><tr><th>Implementation Status</th><th>Number recommendations</th><th>%</th></tr><tr><td>Completed</td><td>2</td><td>8</td></tr><tr><td>Partially completed</td><td>9</td><td>38</td></tr><tr><td>Not completed</td><td>13</td><td>54</td></tr><tr><td>Total</td><td>24</td><td>100</td></tr></table> <p>https://www.tribunais.tl</p> <p>There are no statistics however on the implementation of the audit recommendations following operational audits (concomitant/<i>fiscalização concomitante</i> and successive audits/ <i>fiscalização sucessiva</i>).</p> <p><i>While PEFA 2018 acknowledges the role of CdC in the oversight of government spending, states that poor follow-up on external audit recommendations weakens the overall budgeting process.</i></p> <p><u>Implementation and response to the internal audit recommendations</u></p> <p>Regarding the follow up on the internal audit recommendations, PEFA confirms that the management provides a formal response to audit recommendations for most of entities audited, but there is little evidence of any follow-up by the audited institutions and there are no consolidated records of implementation of recommendations by the Internal Audit Office.</p>	Implementation Status	Number recommendations	%	Completed	2	8	Partially completed	9	38	Not completed	13	54	Total	24	100	<p><i>Infernal audit :</i></p> <p>No information available</p>			
Implementation Status	Number recommendations	%																		
Completed	2	8																		
Partially completed	9	38																		
Not completed	13	54																		
Total	24	100																		

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags ?	Recommendations
(b) There are systems in place to follow up on the implementation/enforcement of the audit recommendations.	<p><i>Summary: there are follow up requirements of audit recommendations, but enforcement is generally weak and PEFA points to poor follow up.</i></p> <p>Monitoring implementation of the External Audit recommendations: There is a mechanism for collecting the information on the accomplishment of the CGE audit recommendations that is enforced and is captured in the CdC's annual report (RPCGE) to be submitted to the Parliament. Few procurement recommendations (typically systemic) are sometimes made in the context of these reports.</p> <p>Under non-CGE audits the auditors are asked to inform CdC in about 6 months about the status of implementation of the audit recommendations. There is no evidence on how this is monitored the degree of implementation.</p> <p>For critical audits the degree of implementation may identified during follow-up audits/ <i>auditoria de seguimiento</i> but these are exceptional cases (e.g., Follow up audit of the infrastructure fund 2015).</p> <p>Monitoring implementation of Internal Audit recommendations: PEFA signaled the absence of evidence of any follow up to the internal audit in the audited institutions and no consolidated records of implementation of recommendations against registers of agreed recommendations held at the level of each institution.</p>		<p>Criterion not met</p> <p>Except for CGE there is no evidence of effective follow up system to monitor audit recommendations. <i>A red flag was raised as this action cannot be immediately mitigated through actions in the public procurement system and requires broader action at the PFM level.</i></p>	Yes	Strengthen the systems for following up on audit recommendations and apply sanctions for noncompliance.

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12(d) Qualification and training to conduct procurement audits

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There is an established programme to train internal and external auditors to ensure that they are qualified to conduct high-quality procurement audits, including performance audits. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion (a):</p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits.</p> <p>Source: Ministry of Finance/Supreme Audit Institution.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 12(d) Assessment criterion</p>	<p><i>Summary: There are no programs for capacity building for auditors (internal and external), in the area of procurement. The main guide for conducting audit is the applicable Legal framework for procurement, and audits are mainly focused on compliance.</i></p> <p>Besides the initial certification training, the other training events are ad hoc, and supply driven. The main supplier of training programs for auditors over the last years has been PFMO (Partnership for the improvement of service delivery through the strengthening of management and supervision in Public Finances in Timor Leste/<i>Parceria para a melhoria da prestação de serviços através do reforço da gestão e supervisão das Finanças Públicas em Timor-Leste</i>). PFMO Program has offered regular training to CdC auditors however, as confirmed in the "PFMO mid-term report the PFMO¹¹⁶" project", PFMO has not managed to anchor the development of additional technical financial audit and procurement expertise in the CdC.</p>	<p><i>Recommended quantitative indicator</i></p> <p>- number of training courses conducted to train internal and external auditors in public procurement audits:</p> <p>No regular training programs/ courses in procurement audit (including performance audit) have been identified.</p>	<p>Criterion not met</p> <p>There is no regular procurement training for auditors tailored to the national public procurement systems nor for carrying out performance audits.</p>		<p>Create a national training program for auditors (internal, external) with procurement content and audit manual for guidance.</p>

¹¹⁶ 2020 PFMO Mid Term review report, p29

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(a): - share of auditors trained in public procurement (as % of total number of auditors). Source: Ministry of Finance/Supreme Audit Institution.					
(b) The selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits; if auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.	<p><i>Summary: procurement audits are typically assigned to auditors that have experience in this area.</i></p> <p>Both MoF and CdC endeavor to assign audits with procurement components to staff that have knowledge/experience of the subject matter. When certain expertise is required MoF and CdC can hire consultants. In the area of procurement CdC reportedly relies on staff that have acquired procurement experience in prior positions. However, given the dearth of qualified staff and procurement training the appropriate procurement support is not guaranteed.</p>		<p>Criterion partially met</p> <p>In the absence of the ability to attract best performers (internal audit) and the lack of procurement training in the country, adequate expertise may be lacking.</p>		<p>Include a training module for procurement audit in the internal auditor and external auditors national training curriculum and develop an audit manual with a procurement section.</p>
(c) Auditors are selected in a fair and transparent way and are fully independent.	<p><i>Summary: Being a technical area, auditors are generally selected in a fair and transparent way with consideration of the absence of conflict of interest. Recruitment requirements are outlined below.</i></p> <p>Internal auditors: Candidates for the auditor functions are selected competitively from inside and outside the Government based on an open selection whose process and content is published. The selection principles are defined in the Law on the statute of civil servants, as amended (Law</p>		<p>Criterion met</p>		

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	<p>8/2004 or Civil Service Law) ¹¹⁷. Selection must be fair, competitive, based on qualifications, experience, and professional competence of candidates on a non-discriminatory basis. The regulations address conflict of interest and integrity requirements related to the civil servants in general.</p> <p>Process is described in detail in the Decree Law No. 34 of 2008 on the recruitment, selection and promotion of civil servants and temporary staff ("DL 34/2008"), as amended.¹¹⁸ Selection is competitive, internal (no more than 1/3 of personnel) or public.</p> <p>External auditors have a special regime that is governed by Decree Law no. 20/2014 Statute and career under the Special regime of the Auditors of the Chamber of Accounts of the High, Administrative, Tax and Accounting court; <i>Estatuto da carreira de regime especial dos auditores da Câmara de contas do tribunal superior administrativo, fiscal e de contas</i>.</p> <p>The selection is fair and transparent and is described in detailed under A 15-19 of DL 20/2014. The selection criteria are relevant and after recruitment the candidates are subject to theoretical and practical training. There are provisions related for civil servants to be free of conflicts of interest, when exercising their functions.</p>				

¹¹⁷ Law of National Parliament No.8 of 2004 on the Statute of Civil Servants [qu aprova o statuto da função pública], as amended.

https://mj.gov.tl/jornal/public/docs/2002_2005/leis_parlamento_nacional/8_2004.pdf

¹¹⁸ Decree Law No.34 of 2008 Regime for recruitment, selection and promotion of civil servants and temporary staff [Regime dos Concursos, Recrutamento, Selecção e Promoção do Pessoal para a Administração Pública (as amended by DL 22/2011 and DL 44/2011))

https://www.mj.gov.tl/jornal/public/docs/2008/serie_1/serie1_no36.pdf

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13. Procurement appeals mechanisms are effective and efficient.

13(a) Process for challenges and appeals

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) Decisions are rendered on the basis of available evidence submitted by the parties.	<p><i>Summary: There are limited provisions in the PPL 2005 concerning evidence to be submitted by parties in the context of complaint. PPL 2005 requires written decisions of competent entities in response to complaint to set out the grounds taken into account and the relevant provisions of the law. There are no supporting Regulations or guidelines to further elaborate upon requirements as to basis of rendering decisions. There are no samples of decisions on challenge (complaint) available to the Assessment Team to assess the practice.</i></p> <p>Note: right of challenge is referred to in this indicator 13 and sub-indicator 1(h) as “complaint” (reclamação)</p> <p>Complaint A.101(2) PPL 2005 Decision on complaint lodged, provides that the written decision on the complaint shall set out the grounds which have been taken into account as well as the relevant provisions of the law. There are no supporting Regulations or guidelines to further elaborate upon requirements as to basis of rendering decisions and no samples of decisions on challenge available to assess practice.</p> <p>PPL 2022: A.176 PPL 2022 provides that the complaint must identify the object and explain its grounds and be accompanied by relevant documents. The decision must be reasoned.</p>		<p>Criterion not met</p> <p>The legal framework refers to the basis for a decision on complaint but there is no information available to assess the basis on which decisions are rendered in practice.</p>		See recommendations at sub-indicator 1(h)(b) under the heading “Critical study of current system of hierarchical appeal plus short term/interim measures”
(b) The first review of the evidence is carried out by the entity specified in the law.	<p><i>Summary: The legal framework provides for the decision on a complaint to be made by the competent entity specified in the law and provides that the written decision on the complaint shall set out the grounds which have been taken into account</i></p>		<p>Criterion not met</p> <p>The legal framework refers to the written decision on complaint but</p>		See recommendations at sub-indicator 1(h)(b) under the

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	<p><i>as well as the relevant provisions of the law. It has not been possible to assess whether this is the case in practice.</i></p> <p>Complaint A.101(2) PPL 2005 Decision on complaint lodged, provides that the written decision on the complaint shall set out the grounds which have been taken into account as well as the relevant provisions of the law.</p> <p>PPL 2022: A.176 PPL 2022 provides that the complaint must identify the object and explain its grounds and be accompanied by relevant documents. The decision must be reasoned.</p>		there is no information available to assess decision making in practice.		heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
<p>(c) The body or authority (appeals body) in charge of reviewing decisions of the specified first review body issues final, enforceable decisions. *</p> <p>// Minimum indicator // * Quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): - number of appeals. Source: Appeals body.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion</p>	No information or data is available to assess this criterion.	<p><i>Minimum indicator // * Quantitative indicator - number of appeals.</i> No information or data is available Recommended quantitative indicator to substantiate assessment of sub-indicator 13(a) Assessment criterion (c): number (and percentage) of enforced decisions. No information or data is available</p>	<p>Criterion not met</p> <p>No information or data is available.</p>		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(c): number (and percentage) of enforced decisions. Source: Appeals body.					
(d) The time frames specified for the submission and review of challenges and for appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic.	<p><i>Summary: The time frames specified in PPL 2005 for submission and review of complaints and issuing of decisions do not unduly delay the procurement process. There is no specialist independent administrative appeal/review entity considering appeals. [The time frames specified in PPL 2005 for submission and review of hierarchical appeals and issuing of decisions do not unduly delay the procurement process or make an appeal unrealistic]</i></p> <p>Complaint A.98 PPL 2005 requires the public service [procuring entity] to decide on the admission/acceptance for consideration of a complaint within 5 days of receipt. The sole ground for non-admission/non-acceptance for consideration shall be that the complaint is lodged after the relevant deadline. Where the complaint is accepted the public service must make a decision on the admissibility of a complaint within 2 days of acceptance and it must also decide on whether the procedure shall be suspended (subject to a prohibition on bid opening, negotiation and contract award – see below) A.100 PPL 2005 requires that “once the case has been analyzed” the competent authority shall decide, within a 12-day deadline, whether it accepts or rejects the complaint. The decision shall be recorded in writing, stating the grounds taken into consideration as well as the law applied. All interested parties shall be immediately notified of the decision.</p> <p>Hierarchical Appeal: A.101 PPL 2005 provides that a hierarchical appeal against a decision on Complaint, shall be</p>		Criterion met		

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>submitted to the competent authority within five days of notification of the decision on Complaint. A.103 provides that the decision to accept or refuse the appeal shall be made “once the case has been analyzed” within a five-day deadline and interested parties shall be immediately notified of that decision.</p> <p>PPL 2022: A.174 PPL 2022 provides that a complaint or appeal must be submitted within a maximum period of 15 days from specified dates, unless a shorter period is provided for in PPL 2022. Submission of a complaint or appeal does not suspend performance of the procurement procedure.</p> <p>A.176 PPL 2022 Complaint provides that the body competent to hear a complaint must decide on its admission within 5 days and a written decision on complaint must be given within 15 days of its admission.</p> <p>A.177 PPL 2022 Hierarchical [appeal] provides for hierarchical appeal against a decision on complaint and sets out time scales for decision on appeal. The body competent to hear the hierarchical appeal must decide on its admission within 10 days and a written decision on hierarchical appeal must be given within 30 days of its admission.</p> <p>A.175 PPL 2022 sets out shorter timescales for complaints and appeals concerning qualification decisions, with 5 days for decision on admission and decision on complaint or appeal within 10 days of its admission.</p>				

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13(b) Independence and capacity of the appeals body

The appeals body:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) is not involved in any capacity in procurement transactions or in the process leading to contract award decisions	<p><i>Summary: The bodies competent to consider an appeal against a decision on hierarchical appeal are not guaranteed sufficiently independent of the procuring entity (public service). There is the possibility that the competent entities for appeal may have been involved, or have the potential to be involved, in some capacity in the procurement transaction or process leading to contract award decisions which is the subject of complaint. PPL 2022 does not resolve this issue.</i></p> <p>Appeal against decisions made on complaints uses a hierarchical appeal route provided for in A.101 PPL 2005. A.102 PPL 2005 specifies the entities competent to decide the hierarchical appeal, being “leaders of State organs of power, ministers and secretaries of State...” are competent to decide hierarchical appeals against decisions of:</p> <p>(a) officers expressly appointed and authorized to carry out procurement procedures</p> <p>(b) heads of autonomous services, public entities and other bodies with administrative and financial autonomy</p> <p>(c) other legal entities in which the State has a higher than 50% (fifty per cent) capital participation which, although not of a business nature, mainly pursue public purposes.</p> <p>A.102(2) PPL 2005 provides that the Prime Minister is the entity competent to examine and decide hierarchical appeals concerning procurement which are lodged against decisions made by leaders of State organs of power, ministers and secretaries of State.</p> <p>PPL 2022: Hierarchical appeal: A.177 PPL 2022 retains a system of hierarchical appeal against a decision on complaint to the highest superior of the author of the act and sets out time scales for submission of and decision on appeal. The</p>		<p>Criterion not met</p> <p>The bodies competent to consider an appeal against a decision on hierarchical appeal are not guaranteed sufficiently independent of the procuring entity (public service). There is the possibility that the competent entities for appeal may have been involved, or have the potential to be involved, in some capacity in the procurement transaction or process leading to contract award decisions which is the subject of complaint.</p> <p><i>This gap is allocated a red flag because the use of a system of hierarchical appeal is not limited to the procurement context, being applicable in appeals against other types of administrative decisions. Review and possible changes are thus likely to require a wider discussion and engagement with government stakeholders in particular and may not be solely within the purview of the Ministry of Finance. (Note: this is the same analysis as presented at indicator 1(h)(b) under the heading “(1) System of hierarchical appeal”.)</i></p>	Yes	See recommendations at sub-indicator 1(h)(b) under the heading “Critical study of current system of hierarchical appeal plus short term/interim measures”

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
	body responsible for hearing the hierarchical appeal may confirm or revoke the act complained or modify or replace it. There are also provisions permitting the body responsible for hearing the hierarchical appeal to revoke in whole or in part other acts that are not the subject of the complaint				
(b) does not charge fees that inhibit access by concerned parties	There is no provision in PPL 2005 requiring payment of fees for submission of an hierarchical appeal.		Criterion met		
(c) follows procedures for submission and resolution of complaints that are clearly defined and publicly available <i>// Minimum indicator //</i> <i>* Quantitative indicator to substantiate assessment of sub-indicator 13(b)</i> <i>Assessment criterion (e):</i> <i>- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> <i>Source: Appeals body.</i>	No information or data is available to assess this criterion.	<i>Minimum indicator //</i> <i>*</i> <i>Quantitative:</i> <i>- appeals resolved within the time frame specified in the law/exceeding this time frame/unresolved (Total number and in %).</i> No information or data is available.	Criterion not met No information or data is available.		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
(d) exercises its legal authority to suspend procurement	No information or data is available to assess this criterion.		Criterion not met No information or data is available.		See recommendations at sub-indicator

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proceedings and impose remedies					1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
(e) issues decisions within the time frame specified in the law/regulations*	No information or data is available to assess this criterion.		Criterion not met No information or data is available.		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
(f) issues decisions that are binding on all parties	No information or data is available to assess this criterion.		Criterion not met No information or data is available.		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
(g) is adequately resourced and staffed to fulfil its functions.	No information or data is available to assess this criterion.		Criterion not met No information or data is available.		See recommendations at sub-indicator

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					1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"

13(c) Decisions of the appeals body

Procedures governing the decision-making process of the appeals body provide that decisions are:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) based on information relevant to the case.	No information or data is available to assess this criterion.		Criterion not met No information or data is available.		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures".
(b) balanced and unbiased in consideration of the relevant information.* Recommended quantitative indicator to substantiate assessment	No information or data is available to assess this criterion.	<i>Recommended quantitative indicator</i> - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent	Criterion not met No information or data is available.		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
<p>of sub-indicator 13(c)</p> <p>Assessment criterion (b):</p> <ul style="list-style-type: none"> - share of suppliers that perceive the challenge and appeals system as trustworthy (in % of responses). Source: Survey. - share of suppliers that perceive appeals decisions as consistent (in % of responses).Source: Survey. 		<p>(in % of responses).Source: Survey.</p> <p>Private sector survey: 78% considered the award not fair and 56% did not trust the system to complaint.</p>			appeal plus short term/interim measures"
<p>(c) result in remedies, if required, that are necessary to correcting the implementation of the process or procedures.*</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 13(c)</p> <p>Assessment criterion (c):</p> <ul style="list-style-type: none"> - outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body. 	No information or data is available to assess this criterion.	<p><i>Recommended quantitative indicator – outcome of appeals (dismissed; decision in favour of procuring entity; decision in favour of applicant) (in %).Source: Appeals body.</i></p> <p><i>No information or data is available.</i></p>	<p>Criterion not met</p> <p>No information or data is available.</p>		See recommendations at sub-indicator 1(h)(b) under the heading "Critical study of current system of hierarchical appeal plus short term/interim measures"
<p>(d) decisions are published on the centralised government online portal within</p>	<p>Decisions are not published on a centralized on-line government portal.</p> <p>No information or data is available to assess this criterion.</p>	<p><i>Minimum indicator // *Quantitative indicator - share of appeals decisions posted on a central online platform within</i></p>	<p>Criterion not met</p> <p>No information or data is available.</p>		See recommendations at sub-indicator 1(h)(b) under the

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specified timelines and as stipulated in the law.* <i>// Minimum indicator //</i> <i>*Quantitative indicator to substantiate assessment of sub-indicator 13(c)</i> <i>Assessment criterion (d): - share of appeals decisions posted on a central online platform within timelines specified in the law (in %).Source: Centralised online portal.*</i>		<i>timelines specified in the law (in %).Source: Centralised online portal.*</i> No information or data is available			heading "Critical study of current system of hierarchical appeal plus short term/interim measures"

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14. The country has ethics and anticorruption measures in place.

14(a) Legal definition of prohibited practices, conflict of interest, and associated responsibilities, accountabilities, and penalties:

The legal/regulatory framework provides for the following:

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(a) definitions of fraud, corruption and other prohibited practices in procurement, consistent with obligations deriving from legally binding international anti-corruption agreements.	<p><i>Summary: Definitions of fraud, corruption and other prohibited practices in procurement are generally consistent with obligations deriving from legally binding international anti-corruption agreements e.g., UNCAC to which Timor-Leste adhered in 2019.</i></p> <p>The PPL 2005 focuses mainly on conflict of interest in procurement and identifies a series of prohibited practices, in the context of ineligibility. Decree law No. 13 of 2005 ("DL 13/2005")¹¹⁹ approving the criminal code makes reference in A.71 to criminal offence involving corruption, embezzlement or abuse of office by a public authority. Fraud and corruption and prohibited practices have been subsequently identified in the Decree Law No.8 of 2009 ("DL 8/2009")¹²⁰ establishing the Anti-Corruption Commission.</p> <p>A comprehensive treatment of this subject including in the area of public procurement is in the Anti-corruption law 7/2020 "Measures for Preventing and Countering Corruption" which entered into force on February 22, 2021, as described below.</p> <ul style="list-style-type: none"> It defines as corruption crimes committed while exercising public roles, passive corruption of public official for illegal acts, passive corruption of public official for legal acts, active corruption of public 		Criterion met		

¹¹⁹ Decree Law No.13 of 2005 Approving the Criminal Code [Que Aprova o Código de Processo Penal]. Jornal da República https://mj.gov.tl/jornal/public/docs/2002_2005/decreto_lei_governo/13_2005.pdf

¹²⁰ Decree Law No. 8 of 2009 Law on the Anti-Corruption Commission [Lei Sobre a Comissão Anti-Corrupção]. Jornal da República https://mj.gov.tl/jornal/public/docs/2009/serie_1/serie1_no25.pdf

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	<p>official, embezzlement of funds and public property, abuse of power, obstruction of justice, influence peddling, profiting from public contracts and conflict of interest.</p> <ul style="list-style-type: none"> The law defines offenses by the private sector actors that are relevant to their participation in public procurement (i.e., corpora delicti of corruption crimes in the private sector), including bribery, traffic of influence on public bodies, exercise of influence on competitors, money laundering and others which are punishable by fines and penalties. It identifies public procurement as an area vulnerable to corruption with specific prohibited acts, such as obstructing open competition and the free participation in public bidding, engaging in illegal acts in the areas of construction by private sector including by complicit public agents. This law also emphasizes the promotion of publicity and transparency in procurement. <p>PPL 2022: A.32 PPL 2022 defines the private agents conduct and refers to illegal and fraudulent acts by bidders. It provides definitions of fraud and corruption and other prohibited practices (e.g., fraudulent, corrupt collusive behaviour, coercive practices and obstruction of justice) identifying remedies initiated and applied by the procuring entity related to their participation in bidding but also to other sanctions under the administrative civil and criminal regime under the law.</p> <p>Private agents should not adopt, participate, support or encourage the following conducts:</p> <ol style="list-style-type: none"> 1. Promise or delivery of property advantages or benefits, with a view to influencing actions, decisions or deliberations that benefit them or harm other private individuals. 				

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	<p>2. Provision of false or incomplete information, with the aim of obtaining actions, decisions or deliberations that benefit them.</p> <p>3. Presentation of false documents.</p> <p>4. Offenses or threats to persons or property, with the aim of obliging them to actions, decisions or deliberations in procurement procedures or in public procurement.</p> <p>5. Restrictive practices of competition, which translate into acts of collusion or simulation between interested parties, during the procedure, with a view to conditioning the proposals, or to distort the participation of other private subjects.</p> <p>A.26 PPL 2022 addresses unacceptable behavior by public servants. It defines conflict of interest, details situations that may lead to conflict of interest (including family and business relations), as well as other fraudulent and corrupt practices related to soliciting or receiving advantages to influence the decisions of jury or other competent bodies.</p>				
(b) definitions of the individual responsibilities, accountability and penalties for government employees and private firms or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.	<p><i>Summary: The legal and regulatory framework identifies individual responsibilities, accountability and penalties for government employees and private firms, or individuals found guilty of fraud, corruption or other prohibited practices in procurement, without prejudice of other provisions in the criminal law.</i></p> <p>Each prohibited behavior identified under the Anti-corruption law, (e.g., crimes committed while exercising public roles, passive corruption of public official for illegal act, passive corruption of public official for legal act, active corruption of public official, embezzlement of funds and public property, abuse of power, obstruction of justice, influence peddling, profiting from public contracts and conflict of interest) triggers specific sanctions (years of imprisonment, fines) and other remedies.</p>		Criterion met		

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	<p>Whoever is definitively convicted of a crime identified in the Anti-corruption law that is punishable by imprisonment for more than five years, is prohibited from taking or being in public offices for a period of 5 to 10 years.</p> <p>Law 9/2011 Organic Law of the Chamber of Accounts of the Administrative, Fiscal, Auditors High Court refers to two types of sanctions related to financial liability (without precluding others) that results from the audit activity:</p> <ul style="list-style-type: none"> the replacement of the amounts corresponding to the damages caused: <u>reintegratória</u> the imposition of the payment of a fine: <u>sancionatória</u>. <p>Financial liability for reinstatement (<u>reintegratória</u>) may be:</p> <ul style="list-style-type: none"> direct, when it falls on the agent of the action, or subsidiary, falling on government members, managers, directors, or others, when: i) the illicit act is practiced with their permission or authorization; ii) by an agent lacking moral integrity appointed or appointed by him; or iii) in the exercise of their supervisory functions, they acted with serious fault, for instance because they did not comply with the CdC's recommendations on internal control. (CdC Annual report 2019) <p>PPL 2005 prohibits negotiations between competitors and the civil servants prior to the contract award (A.34). Requires that public servants observe the rules established by the Statute of Public service including related to conflict of interest and defines it for procurement (A.32). It defines remedies related to conflict of interest including the cancellation of the process and disciplinary action and other remedies provided by law (A.35).</p>				

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	<p>Competitors are prohibited from influencing the outcome of the procurement process (A. 33). It further provides for ineligibility provisions for bidders (A.29) that include those whose executives or directors have been convicted by a definitive court decision in the preceding five years for criminal offenses in relation to their professional behavior or springing from the making of false statements or the giving of wrong information on their qualifications, in view of entering into a contract with any public institution in the Democratic Republic of East Timor; companies whose directors, managers have been convicted in court; and bidders that make false representations. The PPL provides for the principle of accountability financial, disciplinary or criminal, under the terms of the law, because of conducts that violate the PPL provisions, without the jeopardy of criminal sentences to which they are subject. (A.9).</p> <p>DL 12/2005 Administrative infractions of the Procurement Judicial Regime addresses sanctions including the process of bidders' debarment.</p> <p>PPL 2022: A.3 PPL 2022 establishes the principle of responsibility. The subjects involved in the provisioning and contracting, as well as their representatives, may be held liable (criminal, civil, financial or disciplinary) for the acts and omissions, pursuant to the provisions of the PPL and other applicable legislation. The PPL 2022 is also identifying remedies related to barring bidders' participation in bidding, initiated and applied by the procuring entity, but does not exclude other sanctions under the administrative civil and criminal regime under the law. It also states that procuring agencies staff is subject to the provisions of the code of conduct for civil service.</p> <p>A.23 PPL 2022 provides that a public servant must uphold the public interest, not engage in fraudulent acts, avoid conflict of interest, maintain confidentiality. They must disclose personal</p>				

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	situations that may create conflicts of interests in discharging their functions, are barred from asking or receiving advantages to influence the outcome of a procurement process and, overall, have the obligation to report any actions related to infractions that may come to their attention. . Public servants are subject to the provisions (including sanctions) of the code of conduct for civil service.				
(c) definitions and provisions concerning conflict of interest, including a cooling-off period for former public officials.	<p><i>Summary: The legal and regulatory framework includes definitions regarding conflict of interest and a cooling off period for former public officials.</i></p> <p>A. 42 of the Civil Service Law 8/2004 (amended by Law 5/2009) that addresses situations of prohibitions relevant to public procurement staff that include:</p> <ol style="list-style-type: none"> 1. To receive presents from any person that is suspected to be related with the exercise of its function. 2. To serve as intermediaries to obtain contracts for goods and services. 3. Having securities/interests in companies that are in the sector where they are working or over which they have oversight function. <p>The Code of Conduct for the current members of government of 2019 (i.e., the VIII Constitutional Government) includes rules to prevent conflict of interest and consequences of non -compliance. Thus, public officials cannot intervene in judging cases where they have a personal interest that can interfere with an impartial decision. Any situation of conflict of interest should be notified to the appropriate higher hierarchical level.</p> <p>The Anti-corruption Law 7/2020 has provision on conflict of interest and cooling off period as follows:</p>		Criterion met		

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	<p>Conflict of interest is addressed under A 87: The public agent, or a close relative or his or her member, who has a direct or indirect private interest in relation to a natural person or a legal person who has a claim vis-à-vis the public entity where the public agent provides service, in any way (e.g. obtaining employment or contract, or to buy or take on lease, or any other business), must declare in writing the nature of its interest and should refrain from taking party to any procedure or decision concerning that claim, under penalty of being punished with imprisonment from 2 to 8 years.</p> <p>Cooling off period: This law also forbids public official, in two years period after the end of his term, to exercise any activity in private sector, whenever the service to be rendered or the employment is directly related with the roles performed by him or under his supervision when he was in office holding a public position (cooling-off) It provides for fines (from USD 200-2000) for both the private and public agent not excluding criminal liabilities.</p> <p>PPL 2005 addressed conflict of interests in public procurement (A. 32 and A.35) with the following provisions:</p> <ol style="list-style-type: none"> 1. when participating in procurement operations, public employees and agents of Public Administration shall observe the rules on conflict of interests laid down in the Public Administration Personnel Statute. 2. The Public Services, in intervening in procurement procedures, cannot be represented or in any way assisted by the following persons: <ol style="list-style-type: none"> a) Blood relatives up to the second-degree, husband or wife and those who keep a business relationship with one of the competitors. b) Those who have been partners or associates of any one of the competitors in the last three years before the competition opening date. 				

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	<p>3. The Public Service agent cannot award the contract to blood relatives up to the second degree.</p> <p>The PPL further defines remedies related to conflict of interest including the cancellation of the process and disciplinary and other remedies provided by law. (A35).</p> <p>PPL 2022– the public servants conduct requires the avoidance of conflict of interest: A.26(a)(d) PPL 2022 requires public servants to avoid, in the performance of their duties, all situations of potential conflict of personal interests. The article further details situations of conflict of interest. A. 29 PPL 2022 cites among ineligibility (<i>impedimentos</i>) criteria: conflict of interest situation for bidders which cannot be effectively corrected by measures less burdensome than exclusion.</p>				

14(b) Provisions on prohibited practices in procurement documents

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flag s?	Recommendations
(a) The legal/regulatory framework specifies this mandatory requirement and gives precise instructions on how to incorporate the matter in procurement and contract documents.	<i>Summary: The legal/regulatory framework does not specify this mandatory requirement and does not provide precise instructions on how to incorporate these matters in practice.</i>		<p>Criterion not met</p> <p>There are no regulatory requirements and instructions regarding the incorporation of prohibited practices in the bidding documents.</p>		Include in the legal/regulatory framework, mandatory provisions for prohibited practices to be incorporated in the procurement and contract documents and give precise

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					instructions to this effect.
(b) Procurement and contract documents include provisions on fraud, corruption and other prohibited practices, as specified in the legal/regulatory framework.	<p><i>Summary: Standard procurement (bidding) documents and contract conditions which were sampled both contain provisions on prohibited practices relating to fraud and corruption, being modelled on IFIs documents.</i></p> <p>It is unclear what is the status of the standard bidding documents and templates and, in particular, whether use of the Standard Procurement Documents, or particular clauses of parts of the Standard Procurement Documents, is mandatory (see analysis at 2(b)). Use of standard contract conditions is mandatory, according to the legal framework (DL 11/2005 A.26) (see analysis at 2(c)).</p>		<p>Criterion partially met</p> <p>While the sampled bidding documents contain such clauses, the uncertainty as to the status of the standard procurement (bidding) documents means that the criterion is partially met</p>		<p>Incorporate in the legal/ regulatory framework the requirement that the incorporation of provisions on fraud, corruption and other prohibited practices in contract documents is mandatory. To support practitioners and ensure consistency in their application, include such provisions in the bidding documents that will support the implementation of PPL 2022.</p>

14(c) Effective sanctions and enforcement systems

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags ?	Recommendations
(a) Procuring entities are required to report allegations of fraud, corruption and other	<p><i>Summary: Procuring entities are required to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities and there is guidance on how to do it. For the public servants, the requirement to report</i></p>		Criterion met.		

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags ?	Recommendations																							
prohibited practices to law enforcement authorities, and there is a clear procedure in place for doing this.	<p>irregularities are part of the Code of conduct for civil servants (annex to the law 8/2004) and the anticorruption law.</p> <p>CAC has on its website information with modalities of reporting potential cases of fraud and corruption (in person, by cell phone, by letter, email, language(s) to be used, the fact that the anonymous reporting is accepted and commitment to confidentiality. http://cac.tl/report-corruption-2/how-to-report/.</p> <p>In CAC Report 2020 the following complaints have been recorded:</p> <table><tr><th colspan="3">Tabela 6: Keixa husi Públiku</th></tr><tr><th>Nu</th><th>Keixa husi Públiku</th><th>Total</th></tr><tr><td>1</td><td>Funsionariu Públiku</td><td>20</td></tr><tr><td>2</td><td>Kompania/empresasiru</td><td>20</td></tr><tr><td>3</td><td>Estudante</td><td>20</td></tr><tr><td>4</td><td>Komunidade</td><td>10</td></tr><tr><td>5</td><td>Telefone</td><td>5</td></tr><tr><td></td><td>Total</td><td>75</td></tr></table> <p>Civil servants’ regulations provide for:</p> <ul style="list-style-type: none">- Reports to the Ministry of public function - by the government officials (DL 12/2019 Code of conduct for the member of Government) when they encounter potential fraudulent or corrupt cases. Reports to their superiors or the competent authority- Reports– by civil servants (DL 8/2004 amended by 5/2009 on the Statute of the civil service (A.41 m	Tabela 6: Keixa husi Públiku			Nu	Keixa husi Públiku	Total	1	Funsionariu Públiku	20	2	Kompania/empresasiru	20	3	Estudante	20	4	Komunidade	10	5	Telefone	5		Total	75			
Tabela 6: Keixa husi Públiku																												
Nu	Keixa husi Públiku	Total																										
1	Funsionariu Públiku	20																										
2	Kompania/empresasiru	20																										
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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags ?	Recommendations
	<p>and A.48) addresses the obligation to report irregularities by the civil servants stating that any reports against a colleague or superior are subject to confidentiality. (A. 114). Article 85 states that fines may be applied for failure to report offences to the competent authorities, that he or she may have become acquainted with, in the exercise of his or his/her functions.</p> <p>The Anti-corruption law 7/2020, -Has provisions to facilitate the reporting of acts of corruption, requiring the police and judicial authorities to facilitate the communication from the public agents to the competent authorities of acts of corruption that they come across through their activities in particular accepting anonymous complaints and the protection of the complainant (A.5). -Requires all public institutions to offer information to the public on their organization and how to report (including anonymously) potential cases of corruption to public agencies. The channels of appeal (green lines, websites) with confirmation that confidentiality is guaranteed should be publicized to the public agents and citizens and clearly identify which is the “competent authority” to report to (A.28). -Addresses the anonymous complaints in addition to the other forms stated in the Criminal Code. It underscores that the conduct of any person who has reported to the competent authorities, in good faith and on the basis of reasonable suspicion, any facts relating to crimes provided for in this law is deemed lawful (A.109).</p> <p>PPL 2022: A.26 PPL 2022 makes reference to the conduct requirements applicable to the procurement personnel and asks for the reporting of all the situations of infractions that come to their attention.</p>				

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(b) There is evidence that this system is systematically applied, and reports are consistently followed up by law enforcement authorities.	<p><i>Summary: There is a system in place and there is evidence that reports of potential cases of corruption (from audit, civil servants and citizens) are being followed and investigated. Follow up on reports in the area of procurement is not specifically identified, while CAC considers that they account for the majority of the administrative complaints.</i></p> <p>The criminal investigation is carried out by PGR or by an entity that received a delegation from PGR. Some of the cases are delegated to CAC and national/criminal police. The level of implementation according to the PGR 2020 report is between 50%-100%.</p> <p>While there are no statistics regarding procurement complaints CAC estimates that 75-80 % come from procurement.</p> <p>This is consistent with the Procedural Penal Code 2006, A49/3 and 213 all the complaints received are reported immediately to the General Prosecutor Office (PGR) for its validation in order to make a determination on the criminal case. PGR is thus “the owner” of the criminal proceedings.</p>		<p>Criterion partially met</p> <p>While PGR provides in its report information on procurement cases investigated, it is mostly qualitative and there are no statistics specific to procurement.</p>		Given the vulnerability of procurement to corruption and the fact that most of the complaints identified by CAC are related to procurement, it is recommended that the mechanisms for monitoring and reporting on complaints and investigation identify those in the area of public procurement.
(c) There is a system for suspension/debarment that ensures due process and is consistently applied.	<p><i>Summary: There is a system in place for debarment with three forms of debarment: a) exclusion of the tenderer from the procedures; b) declaration of temporary ineligibility for a period of up to 1 year; c) declaration of permanent ineligibility. However, the system is not (consistently) enforced. There is no evidence, however, on how the system is implemented. No debarred bidder was publicized on the e-procurement portal although there is a page for this purpose. There is no guide to support enforcement.</i></p> <p>The legal framework for debarment is described in detail under the sub-indicator 1(d) (c) above]. In addition to the public procurement framework, the 2020 Anti-corruption law reinforces the provisions that may lead to barring private</p>		<p>Criterion not met</p> <p>The debarment system is not (transparently) enforced.</p>		Enforce the debarment system including by developing a user-friendly guide, with consideration of the principles of proportionality in the debarment decisions and due process in the appeal system [see also

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	companies from activating in public procurement; it defines <i>corpora delicti</i> of corruption crimes in the private sector including business bribery, influence peddling, money laundering and the penalties may include prohibition to engage in certain activities up to 3 years; prohibition to conclude contracts with public authorities form 1-3 years; suspension of the right to receive subsidies grants; publication of the decision in two official languages in a widely circulated newspaper.				recommendation under 1(d)(c)]. Publish the list on the e-portal.
<p>(d) There is evidence that the laws on fraud, corruption and other prohibited practices are being enforced in the country by application of stated penalties. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(c) Assessment criterion (d): - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Source: Normative/regulatory</p>	<p><i>Summary: PGR annual reports that are submitted to the Parliament contain information on the case log, status of cases including resolved. However, the laws on fraud and corruption are still to be fully enforced and procurement cases are not identified separately. The debarment mechanisms for bidders that are found guilty of prohibited practices is not enforced.</i></p> <p>While procurement accounts for an important share of the cases review (CAC mentioned 75-80%) procurement statistics are not available. The information on procurement provided in the PGR report is mostly qualitative as illustrated below:</p> <p>Quote We verified and analysed that all the line ministries, have the problem of public contracts without good supervision by the supervisory bodies, thus jeopardizing the interest of the State. Several crimes occurred related to Public Contracts carried such as the crime of economic participation (crime de <i>participação económica</i>) corruption and influence peddling. (PGR report page 21, and 67) Unquotge</p> <p>There is no information on the number of debarred bidders as requested by this indicator. There is urgent need to prepare a guidance for the procuring entities and enforce the debarment system. The guide should be informed by the principle of proportionality in the process of exclusion and</p>	<p><i>Recommended quantitative indicator:</i> - Firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred). Data not available.</p> <p>- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted. Data not available.</p> <p>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %). ES Survey 20 percent; MAPS private sector survey: more than 60 percent.</p>	<p>Criterion partially met</p> <p>There is no evidence of firms/individuals found guilty of fraud and corruption in procurement: number of firms/individuals prosecuted/convicted; prohibited from participation in future procurements (suspended/debarred).</p>		<p>Prepare user-friendly guide for the implementation of the debarment mechanism based on principles of proportionality and due process. Enforce and monitor its implementation and publish the list of debarred bidders on the e-portal. Identify procurement cases separately to inform Government action in this area.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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<p>function/anti-corruption body.</p> <p>- Government officials found guilty of fraud and corruption in public procurement: number of officials prosecuted/convicted.</p> <p>Source:</p> <p>Normative/regulatory function/anti-corruption body.</p> <p>- Gifts to secure public contracts: number of firms admitting to unethical practices, including making gifts in (in %).</p> <p>Source: Survey.</p>	<p>debarment for administrative offenses, provide clarity and ensure due process of appeal against debarment decisions/measures.</p> <p>Figure 20: Percentage of firms requested or expected to give gifts or informal payments</p> <table><caption>Data for Figure 20: Percentage of firms requested or expected to give gifts or informal payments</caption><thead><tr><th>Category</th><th>Timor-Leste2021</th><th>East Asia & Pacific</th><th>Lower Middle Income</th></tr></thead><tbody><tr><td>For construction permit</td><td>24</td><td>39</td><td>28</td></tr><tr><td>For govt contract</td><td>18</td><td>35</td><td>31</td></tr><tr><td>In mtgs w/ tax officials</td><td>5</td><td>21</td><td>16</td></tr></tbody></table> <p>Timor-Leste2021 East Asia & Pacific Lower Middle Income</p> <p>World Bank Enterprise Survey: ES Timor Leste 2021</p>	Category	Timor-Leste2021	East Asia & Pacific	Lower Middle Income	For construction permit	24	39	28	For govt contract	18	35	31	In mtgs w/ tax officials	5	21	16				
Category	Timor-Leste2021	East Asia & Pacific	Lower Middle Income																		
For construction permit	24	39	28																		
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14(d) Anti-corruption framework and integrity training

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<p>(a) The country has in place a comprehensive anti-corruption framework to prevent, detect and penalize corruption in government that involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. *</p> <p>*Recommended quantitative indicator to substantiate assessment of sub-indicator 14(d) Assessment criterion (a): - percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses). Source: Survey.</p>	<p><i>Summary: Government efforts to strengthen governance and clamp down on corruption are part of the strategic plan 2011-2030 and have been recognized by Transparency International, as Timor-Leste advanced 4 points on the Corruption Perception index scale to 42 in 2022 from 38 in 2019 and by 12 points since 2013. https://www.transparency.org/en/countries/timor-leste. In spite of the progress, it is still under the average score of Asia and Pacific region of 45, which is deemed quite low. The anti-corruption framework is comprehensive however the Anti-corruption law that introduced new requirements and mechanisms is relatively new (2020) not all mechanisms for its enforcement are in place.</i></p> <p>The comprehensive anti-corruption framework and key institutions and functions is described below: PGR is in charge of investigation of complaints alleging fraud and corruption and, in this process, cooperates with the other agencies. PGR may delegate investigations to other agencies including CAC, Police. The cooperation with the Civil Service Commission (CFP) is supported by an MOU that identifies the mechanisms of communication and collaboration between the two agencies. CFP shares with PGR disciplinary offenses that have criminal relevance and need to be investigated by PGR while PGR informs CFP about the complaints received, criminal sanctions applied.</p> <p>The Civil Service Commission (CFP) (established by Decree 7/2009) has the mandate to investigate cases of violation of the Code of conduct establish sanctions and channels issues to the competent authorities as appropriate (Ombudsman, General Prosecutor-PGR, Inspector General and other competent bodies. CFP collaborates with both PGR and CAC in addressing complaints.</p>	<p><i>Recommended quantitative indicator</i></p> <p><i>(a) percentage of favorable opinions by the public on the effectiveness of anti-corruption measures (in % of responses).</i></p> <p>MAPS Private sector survey</p> <p>Opinions on the effectiveness of integrity actions in these areas (see graph under column 2):</p> <ul style="list-style-type: none"> Integrity training Reporting channels Codes of conduct Declaration forms Watchdog organizations E-procurement Risk analysis Strong enforcement 	<p>Criterion partially met</p> <p>The anti-corruption framework is comprehensive however the Anti-corruption law is relatively recent and some of the stated anti-corruption mechanisms are not yet in place.</p>		<p>Develop enforcement mechanisms in particular in the following areas: self-declaration of conflict of interest, cooling off period, whistle blower protections.</p> <p>integrity training. CAC is also contemplating the development of an Integrity pact that can support transparency, fairness and integrity in the procurement process.</p> <p>- Disseminate the Anti-corruption law to step up the citizens engagement in the oversight of the public and private sector. Promote integrity controls and code of ethics for</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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	<p>CAC is the key agency implementing the Anti-corruption law and responsible for coordinating the anti-corruption program in Timor-Leste. CAC is currently developing the corruption preventive function including awareness raising about principles of and instruments for countering corruption among public bodies and entities, non-governmental organizations, educational institutions and civil society and training of investigative journalists. CAC offers confidential channels for reporting suspected corruption and has investigative powers.</p> <p>For an effective implementation of the Anti-corruption law, CAC intends to develop in the short term a National Strategy to prevent and Combat Corruption. To guide the preparation of the strategy, a base line survey was prepared in 2020 in order to identify the areas of highest vulnerability to corruption in Timor-Leste. As expected, procurement is one of the high-risk areas identified.</p> <p>Future programs will also focus on the enforcement of the cooling off period, updating of the code of ethics, expanding its sensitization activities, developing an Integrity pact, a mechanism to make public procurement more open and equitable while reducing the opportunities for corruption. Stepping up dissemination activities of the Anti-corruption law in particular to encourage citizens to participate including to root out corruption in the private sector (A.88).</p> <p>CAC started engaging various stakeholders that could support the advancement of the anticorruption agenda; among them are CSOs that are interested to engage in integrity areas. CAC signed an MOU with JSMP (Judicial System Monitoring Program), in the area of court monitoring, CAC undertook joint activities with the Chamber of commerce for the dissemination of the Anti-corruption law. CAC also engaged with some of the large telecom companies to disseminate</p>				private companies

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	<p>information (including during the pandemic). CAC has a quadrilateral agreement with the Civil service commission, Ombudsman, Estate General Inspectorate. CAC has also signed an MOU with the National Police to cooperate on the area of investigation.</p> <p>One of the key recent achievements of CAC is the implementation of the asset declaration/financial disclosure regime. CAC is the agency responsible for collecting verifying, archiving and reporting on the declarations of civil servants. To this end, CAC has prepared standard operating procedures, an electronic platform, and an ongoing dissemination campaign. In this area CAC cooperates with the CFP. This is the first year off enforcement of the asset declaration/financial disclosure. 22765 (5,015+17,750) public servants and family member have been registered. As of April 30, 2022, 1027 (0.6%) have submitted their declaration. The registered civil servants are from 102 public institutions.</p> <p>CAC established a partnership with UNDP and KOIKA in 2018 to implement a new initiative 'Strengthening anti-corruption, transparency and accountability for sustainable development in Timor-Leste'. The Project aims to strengthen anti-corruption, integrity, transparency, and accountability at the national and municipal levels and raise awareness among citizens in Timor-Leste. First, the project focuses on finalizing the development of overarching policy guidelines on anti-corruption, accompanied with capacity development initiatives for civil servants of the national and municipal administrative offices. Second, soft mechanisms for enhancing public sector integrity will be developed and distributed to the public and private sector stakeholders. Third, greater civic engagement will be facilitated through increased access to information and youth training initiative. With this comprehensive and multi-stakeholder approach to address corruption, the project envisions, in the longer-term,</p>				

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	<p>robust, transparent, and accountable government institutions and empowered citizens who can hold them accountable. These goals and objectives are in line with the Timor-Leste Strategic Development Plan (2011-2030) as well as the 'United Nations Development Assistance Framework (UNDAF) for the Democratic Republic of Timor-Leste 2015-2019. (Final report baseline Survey CAC 2020).</p> <p>Over the last decade CAC has conducted several perception surveys:</p> <ul style="list-style-type: none"> - 2011 integrity survey conducted by CAC with the support of the Millennium Challenge Corporation, USAID. - 2013: Integrity survey of public servants This survey was conducted by the CAC with support from the Millennium Challenge Corporation and USAID - 2015: integrity survey in cooperation with UNODC - 2020: base line survey carried out with the UNDP support. <p>MAPS survey provided the following results:</p>				

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	<div><p>Perception of effectiveness of anti-corruption measures</p><table><caption>Perception of effectiveness of anti-corruption measures</caption><thead><tr><th>Measure</th><th>Very effective</th><th>Somewhat effective</th><th>Not really effective</th><th>Not at all effective</th></tr></thead><tbody><tr><td>Providing...</td><td>50%</td><td>0%</td><td>50%</td><td>0%</td></tr><tr><td>Dedicated...</td><td>50%</td><td>20%</td><td>30%</td><td>0%</td></tr><tr><td>A code of...</td><td>50%</td><td>20%</td><td>30%</td><td>0%</td></tr><tr><td>Declaration...</td><td>50%</td><td>50%</td><td>0%</td><td>0%</td></tr><tr><td>Watchdog...</td><td>50%</td><td>20%</td><td>30%</td><td>0%</td></tr><tr><td>E-procurement</td><td>20%</td><td>80%</td><td>0%</td><td>0%</td></tr><tr><td>Risk analysis</td><td>50%</td><td>50%</td><td>0%</td><td>0%</td></tr><tr><td>Strong...</td><td>50%</td><td>0%</td><td>50%</td><td>0%</td></tr></tbody></table></div>	Measure	Very effective	Somewhat effective	Not really effective	Not at all effective	Providing...	50%	0%	50%	0%	Dedicated...	50%	20%	30%	0%	A code of...	50%	20%	30%	0%	Declaration...	50%	50%	0%	0%	Watchdog...	50%	20%	30%	0%	E-procurement	20%	80%	0%	0%	Risk analysis	50%	50%	0%	0%	Strong...	50%	0%	50%	0%				
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(b) As part of the anti-corruption framework, a mechanism is in place and is used for systematically identifying corruption risks and for mitigating these risks in the public procurement cycle.	<p><i>Summary: There are various mechanisms that identify corruption, including in procurement (asset declaration, beneficial ownership, declaration of COI) in Timor-Leste – but they are still to be fully enforced and statistics on corruption do not identify and consolidate procurement cases separately.</i></p> <p>Procurement is identified in the Anti-corruption law and PGR annual report as an area of high risk. To assess integrity risks, over the last 10 years, CAC with the support of international partners, conducted four integrity perception survey. The last one in 2020 has identified procurement vulnerabilities among key public institutions, mostly ministries.</p> <p>As CAC is ready to develop an anti-corruption strategy and the 2020 base line survey has identified procurement as a priority</p>		Criteria partially met <p>While procurement has been identified as an area of highest risk, there is no systematic identification and mitigation of procurement risks related fraud and corruption.</p>		Develop mechanisms for systematically identifying corruption risks in public procurement and collect and publish relevant data to help shape the procurement policy. Start with the sectors of strategic priority.																																													

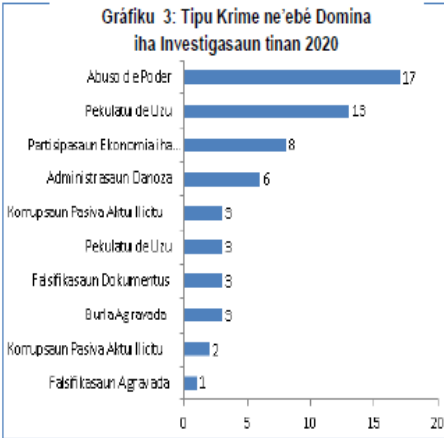
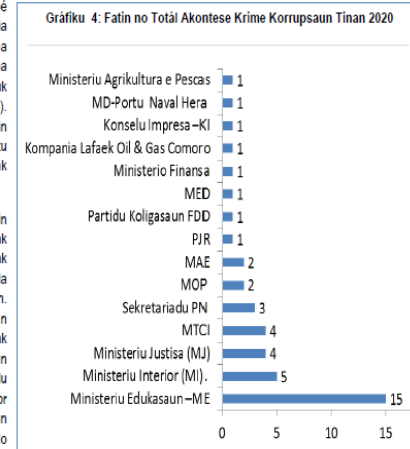
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	<p>area in its efforts to combat corruption, future actions could focus on assessing specific risks associated with the procurement cycle and identifying possible mitigation measures. This is consistent with the CAC strategic plan 2021-25 that has its in scope the assessment of the integrity risks.</p> <p>The (full) implementation of the asset declaration, beneficial ownership. self-declaration of conflict of interest, cooling period, whistle blower protection, can help identify and mitigate these risks. Identifying specifically procurement cases could help addressing these risks in a more targeted and effective way.</p>				
(c) As part of the anti-corruption framework, statistics on corruption-related legal proceedings and convictions are compiled and reports are published annually.	<p><i>Summary: there is information published by PGR on offenses and convictions, but procurement cases are not identified separately to inform the anti-corruption effort and policy formulation in the area of public procurement.</i></p> <p>There are statistics on legal proceedings published by PGR and CAC. CAC provides statistics on the complaints received and categorizes by type of crime and sector/agency and provides information on the status (see charts below). PGR publishes in their annual report to the Parliament information on the case load, and the legal proceedings. (See chart below). Information does not identify procurement cases separately. Data series to assess trends would provide some insights into how the integrity agenda is evolving in the country.</p>		<p>Criterion partially met</p> <p>There are no statistics on the cases investigated and sanctions applied in procurement.</p>		<p>Publish annually statistics, on the outcome of the investigations in procurement by type of sanctions linked with sector/agency, origin of the complaint and provide data series to understand trends.</p>

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*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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(d) Special measures are in place for the detection and prevention of corruption associated with procurement.	<p>Summary: While there are legal provisions for prevention and detecting fraud and corruption in procurement (e.g., debarment mechanism, declaration of beneficial ownership, fraud and corruption asset declaration/financial disclosure including for procurement officials, cooling off period, self-declaration of conflict of interest) asset declaration/financial disclosure is in its early stages of implementation, debarment is not effectively implemented and mechanisms for preventing conflict of interest (in particular for public servants) and for the application of the cooling off period are still to be developed.</p> <p>According to the bidding documents that are exemplified on the e-portal and follow the IFIs models (albeit it is not clear they are mandated) bidders in the Bid submission form, are asked to declare that they are not in a situation of conflict of interest, not sanctioned and must declare any commissions they have paid in the procurement process.</p>		<div>Criterion partially met</div> <p>While there are legal provisions for prevention and detecting fraud and corruption in procurement, some mechanisms are in the early stages of implementation (asset declaration/financial disclosure), debarment is not effectively implemented and mechanisms for effectively preventing conflict of interest and for the application of the cooling off period are still to be created.</p>		<p>Strengthen enforcement mechanisms for debarment, conflict of interest declaration (including for public servants), cooling off period and continue enforce the asset declaration/financial disclosure and beneficial ownership. CAC intends to develop an</p>																										

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	<p>Regarding public servants/officials, preventing measures to avoid Conflict of interest is asset declaration/financial disclosure, beneficial ownership declaration, enforcing a cooling off period for civil servants and conflict of interest self-declaration. Asset declaration/financial disclosure is being rolled out for the year 2021 and it incorporates information on beneficial ownership (also part of the firm's registration). The cooling off period is yet to be implemented, and self-declaration is largely not enforced for public servants. The external audit is quite effective in identifying areas of high risk and irregularities that can be potentially fraud and corruption cases. But this is happening typically after the fact.</p> <p>Anti-corruption law requires that all conflicts of interest situations be declared in writing – this is very relevant for the participants in the procurement process in particular the evaluation committee (<i>júri</i>).</p> <p>CAC intends to develop an Integrity Pact providing for a written commitment signed by all parties to respect specific integrity standards during the procurement process</p> <p>PPL 2022: has added a requirement for self-declaration to support the above objective:</p> <p>A.30 PPL 2022 Eligibility (<i>Habilitação</i>) requires that the candidate, guest or competitor must submit a declaration, under oath, that he is not prevented from participating in a procurement procedure. A. 26 PPL 2022 refers to the Conduct of public servants.</p>				integrity pact which would support these objectives.

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(e) Special integrity training programs are offered and the procurement workforce regularly participates in this training.	<p><i>Summary: There are no special integrity training programs organized and offered regularly to the procurement workforce by procuring entities, MoF and or CAC. The public awareness, training activities are listed in the Anti-corruption law (see excerpt below) and while CAC has started delivering some awareness programs in schools, with the private sector (Chamber of Commerce) did not progress significantly on this agenda because of resource constraints. Currently, 2022 Budget Book v.2 identifies among the CAC activities to be pursued in 2022 public sensitization and capacity building in the area of integrity.</i></p> <p>Anti-corruption law 7/2020: A.25 Anti-corruption law: Information and public education provides the CAC and public agencies responsibilities in the area of awareness and training to prevent and combat corruption.</p> <ul style="list-style-type: none"> - The Anti-Corruption Commission carries out campaigns of advertising, which include pamphlets and posters to be displayed in all public institutions, the use of the internet, as well as advertising spots on radio and television. - The Anti-Corruption Commission works together with the public institutions to ensure that information about measures against corruption is disseminated in the entities, among the public, non-governmental organizations and educational institutions in order to promote adequate prevention work, as well as the integration of anti-corruption awareness in the curricula of schools and universities. 		<p>Criterion not met</p> <p>There are no integrity training programs organized by procuring entities, MoF and/ or CAC offered regularly to the procurement staff.</p>		MoF to develop, in collaboration with CAC, a module on integrity training to sensitize procurement practitioners on the corruption risk and tools to prevent, identify and address/mitigate corruption in all the stages of the procurement process cycle.

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14(e) Stakeholder support to strengthen integrity in procurement

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(a) There are strong and credible civil society organizations that exercise social audit and control.	<p><i>Summary: There are many civil society organizations in Timor-Leste but none that has public procurement in its scope of activity.</i></p> <p>There are many civil society organizations in Timor-Leste considering the country population. The Forum ONG Timor-Leste (FONGTIL) is the umbrella group for nongovernment organizations (NGOs) in Timor-Leste. In 2018, it had 348¹²¹ members, 90% local. Many CSOs have been established after independence when funds became available for the country's reconstruction and most of them were involved in projects. As regards policy and advocacy CSOs, one estimates that there are less than 50 which is still an important number. Among these there are CSOs that conduct social audit (e.g., Belun) and PFM monitoring, advocacy and public education (Lao Hamutuk and Core Group Transparency). However, except for some sporadic interventions¹²², public procurement it is not an area that falls within the scope of these NGOs.</p>	.	<p>Criterion not met</p> <p>There are some CSOs/NGOs involved in governance/PFM, social audit however none of them is currently addressing procurement issues except sporadically.</p>		Engage CSOs/NGOs involved in governance/PFM and social audit to build their capacity to conduct oversight of public procurement.
(b) There is an enabling environment for civil society organizations to have a meaningful role as third-party monitors, including clear channels for engagement and feedback that are	<p><i>Summary: CSOs, through FONGTIL (the umbrella organization for NGOs in Timor-Leste) are invited for events such as Budget discussion. However, this is not the case in public procurement where so far there are no regular channels for engagement and feedback for the civil society organizations.</i></p>		<p>Criterion not met</p> <p>While there are some CSOs that are active in areas such as policy advocacy governance, social audit, there are not clear channels of CSO engagement and feedback in the</p>	Yes	Create an enabling environment for consultation including for public procurement Encourage and

¹²¹ Asian Development Bank, 2019 Civil society brief

¹²² CSOs identified by CAC as current or potential collaborators are: CEPAD Centre of Studies for Peace and Development, LABEH- Lalenok Ba Ema Hotu., Lao Hamutuk, JSMP Judicial System Monitoring Program.

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promoted by the government.	<p>ADB “Civil society brief” 2019 identifies three levels of CSO cooperation with the Government in Timor Leste: (i) upstream: influencing government policy as it is formulated; (ii) midstream: working with government on policy and specific draft legislation; and (iii) downstream: urging presidential veto of laws already passed by Parliament. CSOs also implement projects and activities with and for the government. More recently, CSOs have been active in monitoring and auditing government projects</p> <p>CAC is developing mechanisms to engage CSOs and works with FONGTIL to monitor government programs and signed an MOU with JSMP on corruption cases brought to the court, raising public awareness and publicity in the media. PGR in its Annual reports lists among its activities, attending FONGTIL workshop in 2020.</p> <p>There is Government support for social audit CSOs. A social audit department was created in the PM office in 2015 to support communities, through civil society organizations, to monitor and provide constructive feedback on government programs, projects and services.</p> <p>In late 2016, The Asia Foundation and NGO Forum/FONGTIL launched a two-year program, with funding from the European Union, to improve government accountability through social auditing. A handbook was developed to support civil society organizations’ practice of social auditing.</p> <p>(Institute for Sustainable Futures, 2017 https://www.uts.edu.au/isf/news?page=5)</p>		<p>area of public procurement (e.g., a consultation framework).</p> <p><i>This gap is allocated a red flag because engaging CSOs in the area of procurement requires political will at the higher level including for creating a broad framework for regulatory consultation including for regulations in the area of public procurement.</i></p>		<p>incentivize CSOs/NGOs to Include public procurement monitoring in their scope of activity and train them to play an effective role to identify potential cases of corruption in the procurement and contract management process.</p>
(c) There is evidence that civil society contributes to shape and improve integrity of public procurement. *	<p><i>Summary: It is not evident that CSOs contribute to improve integrity in public procurement. The PPL 2022 was not subject to citizens comments -see 11a(a).</i></p> <p>A.24 Anti-corruption law 7/2020 has provisions regarding the need to promote the civil society, (NGOs, trade unions,</p>	<p><i>Recommended quantitative indicator:</i></p> <p><i>- number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight</i></p>	<p>Criterion not met</p> <p>There is no evidence that civil society contributes to shape and improve integrity of public procurement.</p>		<p>Encourage and incentivize CSOs/NGOs to Include public procurement monitoring in</p>

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<p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (c): - number of domestic civil society organizations (CSOs), including national offices of international CSOs) actively providing oversight and social control in public procurement. Source: Survey/interviews.</p>	<p>religious organizations, media) participation including in the decision process for the formulation of the national strategy to prevent corruption. CSOs have not been engaged in improving integrity in public procurement.</p>	<p>and social control in public procurement. None. Source: Survey/interviews.</p>			<p>their scope of activity and train them to play a meaningful role in social audit and control in public procurement.</p>
<p>(d) Suppliers and business associations actively support integrity and ethical behavior in public procurement, e.g., through internal compliance measures. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(e) Assessment criterion (d): - number of suppliers that have internal compliance measures in place (in %). Source: Supplier database.</p>	<p><i>Summary: While the private sector survey has identified some companies that responded affirmatively to the question on their adopting internal control measures, CAC consider this process in its early stages- CAC has not received complaints yet from within the private sector companies which points to the need of increasing awareness in this area. This is one of the actions envisaged in the CAC agenda.</i></p> <p>It is also noted that CAC has been engaging some private sector associations (e.g., Chamber of commerce of Timor-Leste) and collaborated with telecom companies who offered free space for CAC to spread anti-corruption messages during COVID 19 crisis. CAC is occasionally invited to private companies to deliver sessions on the Anti-corruption law.</p> <p>While this indicator refers to practice, it is important mentioning that the legal framework supports this objective.</p> <p>The Anti-corruption law 7/2020 has provisions that:</p>	<p><i>Recommended quantitative indicator</i> - number of suppliers that have internal compliance measures in place (in %). 46% declared that they have internal compliance measures. Source: Private sector survey</p>	<p>Criterion partially met</p> <p>There is some evidence of private companies adopting internal control and codes of conduct based on the private sector survey; CAC feedback, however, reveals that this process is in its early stages.</p>		<p>CAC to step up its campaign to increase awareness in private companies on issues of strengthening the governance systems.</p>

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	<ul style="list-style-type: none"> Encourage private companies to adopt Codes of Conducts similar to those developed in the public sector that include also provisions specific to their activities (A.4(5) Anti-corruption law). Address the obligations of supervisors/auditors, board of supervisors of commercial companies to report cases of corruption they may come across while exercising the supervisory functions and not doing so is construed as a criminal offense (A.23 Anti-corruption law). 				

14(f) Secure mechanism for reporting prohibited practices or unethical behavior

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
(a) There are secure, accessible and confidential channels for reporting cases of fraud, corruption or other prohibited practices or unethical behavior.	<i>Summary: CAC has established a platform on its website that is secure and confidential, to guide citizens on how to report prohibited practices and unethical behavior. There are provisions for whistle blower protection in the Whistle blower and Anti-corruption laws. Finally, systems are in place to follow up on disclosure with all reports related of fraud and corruption being submitted to General Prosecutor Office who assesses and assign them for investigation.</i>		Criterion met Area for improvement: Anti-corruption law has provisions for public institutions to offer information to the public on their organization and how to report (including anonymously) potential cases of corruption as per the anti-corruption law. This action is still to be completed.		Public institutions should make public to citizens the channels of appeal (e.g., green lines, websites) with confirmation that confidentiality is guaranteed.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>How to Report Corruption:</p> <p>Corruption can be reported by anyone in any of the following ways:</p> <p>In person (meet any staff of CAC to give your report verbally or in writing)</p> <p>By cell phone/telephone: 7326599, 7326597, 7991568; (you can also send text messages)</p> <p>Write a letter (drop a clearly written note at the office of CAC)</p> <p>Send email/fax through: cacinfodiak@gmail.com</p> <p>The use of any of the following Tetum, Portuguese, English, and Indonesia are acceptable in making a report to CAC. One can himself/herself or remain anonymous when making a report. However, it would be great if anyone reporting corruption can leave some identity for feedback and interaction purposes. CAC encourages individuals to identify themselves to help in following up certain investigations. All reports and identity of those reporting will be treated with absolute confidentiality.</p> <p>Public servants, citizens, commercial companies are required to report cases of fraud and corruption according to the public/civil service regulations including the code of conduct and the Anti-corruption law. CAC has established a secure channel for filing complaints and has posted information on its website detailing the avenues for reporting potential cases of fraud and corruption (i.e., in person, by cell phone, by letter, email), languages to be used, the fact that the anonymous reporting is accepted and confidentiality is safeguarded). http://cac.tl/report-corruption-2/how-to-report/.</p> <p>The importance of appropriate communication channels is mentioned in various regulatory documents. In practice there are various entities that receive complaints: Civil Service Commission, CdC, Anti-corruption Commission, PM office social audit department</p> <p>According to A. 49(3) and 213 of the Procedural Penal Code 2006 all the complaints received alleging corrupt/criminal behavior are referred to the General Prosecutor Office.</p> <p>The Anti-corruption law (A. 28) requires all public institutions to offer information to the public on its organization and how to report (including anonymously) potential cases of</p>				

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	corruption to public agencies. This is still to be fully implemented.				
(b) There are legal provisions to protect whistle-blowers, and these are considered effective.	<p><i>Summary: a whistle blower protection law has been adopted in 2009 but its enforcement mechanisms are still to be put in place.</i></p> <p>There are legal provisions to protect whistle blowers under Law of National Parliament No. 2 of 2009 on Witness Protection (Law 2/2009) and the Anti-corruption law 7/2020 (A. 107-108). The Ministry of Justice is yet to create the institutional arrangements and the regulations for its enforcement.</p>		<p>Criterion partially met</p> <p>While there are provisions for the protection of the whistle blowers they are not operationalized yet.</p>		Create the needed implementation tools to ensure whistleblower protection so citizens are encouraged to report on cases of fraud and corruption.
(c) There is a functioning system that serves to follow up on disclosures.	<p><i>Summary: There are instructions on how disclosures of potential cases of corruption (regardless of the source) are addressed. However, it is in the early stages of enforcement.</i></p> <p>Criminal offenses are addressed to the Prosecutor office, while compliance offenses are addressed to the CdC. Most irregularities reported are compliance related. The relevant jurisdiction then decides if the complaint is substantiated and should be prosecuted. The role of the Public Prosecutor is similar for audited financial statements (PEFA).</p> <p>Regarding the financial disclosure, CAC is the agency responsible for collecting verifying, following up, archiving and reporting the declarations of the public officials¹²³, and to this effect has issued standard operating procedures, has developed an electronic platform, and is rolling out a dissemination campaign. Financial disclosures are audited every 2 years and there are follow up procedures.</p>		<p>Criterion partially met</p> <p>There are mechanisms to follow up on disclosures however, some are in the early stages of enforcement (e.g., financial disclosure) hence this criterion is rated as partially met.</p>		Strengthen mechanisms and enforcement identifying procurement cases to improve integrity in public procurement.

¹²³ Except for the: President, Parliament, officers of the Anticorruption Commission – whose declaration is submitted to the Supreme Court.

MAPS assessment in:

Name/organisation:

Date:

14(g) Codes of conduct/codes of ethics and financial disclosure rules

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(a) There is a code of conduct or ethics for government officials, with particular provisions for those involved in public financial management, including procurement.</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g)</p> <p>Assessment criterion (a):</p> <p>- share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).</p> <p>Source:</p> <p>Normative/regulatory function.</p>	<p><i>Summary: There is a Code of conduct for civil servants that was issued under the Civil Service Law 8/2004, as amended.</i></p> <p>The Code of ethics for civil servants has provisions relevant to the procurement area requiring the civil servant to:</p> <ul style="list-style-type: none"> - Reject whatever favor offer or remuneration or other gift which is offered in exchange of the execution of omission of an official action. - Use the assets that pertain to the Public Administration of Timor Leste and the information acquired only in carrying out its official responsibilities. - Reveal to the administration any benefit direct and indirect that they can acquire from a lucrative business, activity that is under its official responsibility. <p>The government has also enacted the Government Resolution No. 12/2019, of March 13, 2019, approving a Code of Conduct for the current members of government (i.e., the VIII Constitutional Government). The intention of this Code is to offer clear guidance on how members of government should behave, as well as laying down the principles applicable to their conduct. It includes prohibition to receive undue advantages, rules to prevent conflict of interest, requirements to report on acts/tentative act of fraud and corruption, consequences of non-compliance.</p> <p>A.4(3) Anti-corruption law 7/2020 requires that special Codes of conduct should be prepared in areas that are vulnerable to corruption consistent with their particular risks, but so far there is no specialized code of conduct in public procurement.</p>	<p><i>Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g)</i></p> <p><i>Assessment criterion (a):</i></p> <p>-</p> <p><i>-share of procurement entities that have a mandatory code of conduct or ethics, with particular provisions for those involved in public financial management, including procurement (in % of total number of procuring entities).</i></p> <p><i>- 100% of procurement entities are subject to the code of conduct for civil servants.</i></p>	<p>Criterion partially met</p> <p>There is a Code of conduct, but it does not reflect the new principles brought about by the anti-corruption legislation. Anti-corruption law 7/2020 requires that special Codes of conduct should be prepared in areas that are vulnerable to corruption consistent with their particular risks but so far there is no specialized code of conduct in public procurement.</p>		<p>Update the Code of conduct to make it consistent with the additional requirements under the anti-corruption law. As recommended by the same law, a special Code of conduct could be prepared for public procurement, since it is an area of high risk that is vulnerable to corruption.</p>

MAPS assessment in:
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Date:

Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
<p>(b) The code defines accountability for decision making, and subjects decision makers to specific financial disclosure requirements. *</p> <p>* Recommended quantitative indicator to substantiate assessment of sub-indicator 14(g) Assessment criterion (b):</p> <p>- officials involved in public procurement that have filed financial disclosure forms (in % of total required by law).</p> <p>Source:</p> <p>Normative/regulatory function.</p>	<p><i>Summary: The code defines accountabilities for decision making and specifies financial disclosure requirements. However, 2022 was the first year when financial disclosure forms were filed so there is not much experience to report in this area.</i></p> <p>The 2019 Code of Conduct for the current members of government (i.e., the VIII Constitutional Government) lays down the principles applicable to their conduct. It includes prohibition to receive undue advantages, rules to prevent conflict of interest, requirements to report on acts/tentative act of fraud and corruption, consequences of non - compliance.</p> <p>Financial disclosure was enacted by the Anti-corruption law 7/2020 with the objective (A.27) to:</p> <p>(i) Identify and prevent Conflict of interest; and (ii) Monitor unusual increases in the assets of persons subject to this requirement.</p> <p>The authority in charge to receive, monitor and verify the disclosures is the Anti-Corruption Commission except for higher level officials (president, Government members, MPs) whose declarations are verified by the Supreme Court – <i>O Supremo Tribunal de Justiça</i>.</p> <p>The Anti-Corruption Commission that enforces the law is also in charge of developing the systems (guides, consultation mechanisms, applying sanctions (i.e., fines), maintaining statistics, provide a bi-annual report with number of persons subject to disclosure requirements, number of non-compliant persons, number of persons subject to sanctions (administrative, disciplinary or criminal).</p> <p>(A.29 Anti-corruption law 7/2020 defines the public agents that need to provide asset declaration/financial disclosure, and among them are mentioned: <i>Dirigente e funcionário afeto a serviço de aprovisionamento e contratação pública</i>.</p>	<p><i>Recommended quantitative indicator</i></p> <p><i>- officials involved in public procurement that have filed financial disclosure forms (in % of total required) law).</i></p> <p>Overall, 0.6% by April 30, 2022 (first year of implementation) – no specific information on procurement officials</p> <p>Source: CAC</p>	<p>Criterion partially met</p> <p>The Code defines accountability for decision makers and requires financial disclosure - however its implementation has just been launched in 2022, so the level of compliance is relatively low and there is no specific information on procurement officials.</p>		<p>Continue enforce the financial disclosure and monitor procurement officials, given that procurement is a high-risk area.</p>

*Highlighted fields: quantitative indicators; a black frame indicates minimum quantitative indicators.

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Assessment criteria	Step 1: <u>Qualitative analysis</u> (comparison of actual situation vs. assessment criteria)	Step 2: <u>Quantitative analysis</u>	Step 3: <u>Gap analysis</u> / conclusions (describing any substantial gaps)	Red flags?	Recommendations
	<p>It also establishes the periodicity and content of the declaration including for family members. The Anti-corruption law 7/2020 establishes accountabilities and sanctions (Sections VI, Infractions and sanctions) for non-submittal, delays, incomplete declaration, false information, obstructing the verification process and fraudulent and corrupt acts. Sanctions are also identified for the government agents that verify the declaration in case there are unjustified delays or confidential information is leaked. It also defines the standard conservation time for 5 years with a higher time frame for cases subject to criminal investigation (until the criminal case is closed) (A5(7) Anti-corruption law 7/2020). Refusal to provide clarifications on the asset declaration is communicated to the employer and to the Public Service Commission (A. 41 Anti-corruption law 7/2020).</p> <p>ENFORCEMENT: CAC in collaboration with the Civil Service Commission (CFP) has advanced in operationalizing the asset declaration/financial disclosure: established a unit in charge with SOPs, has developed an electronic platform and has disseminated the information to all public agents that are subject to this requirement</p> <p>As of April 30, 2022, the CAC has registered 5,015 persons from 102 public institutions and 17,750 family members have been registered – so far 1027 have submitted their declaration forms. The asset declaration/financial disclosure form is digitized. https://drbi.cac.tl/declarante/login for confirmation. It contains information related to beneficial ownership.</p>				
(c) The code is of mandatory, and the consequences of any failure to comply are administrative or criminal.	<p><i>Summary: The Code of ethics is mandatory, and the consequences of any failure are administrative or criminal.</i></p> <p>The Civil Service Law 8/2004, as amended, provides that: A civil servant shall, in his or her acts, abide by the Code of Ethics of the Civil Service (A. 45) Civil Service Law 8/2004 and in the</p>		Criterion met		

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	<p>exercise of his or her functions, a civil servant shall abide by an honest, integral, and ethical conduct under penalty of criminal and disciplinary liability (A. 7 Civil Service Law 8/2004).</p> <p>One of the functions of the Civil Service Commission is to promote the respect for the code of ethics provided for in the Statute of the Civil Service; to initiate, conduct and decide on disciplinary proceedings and apply the respective penalties.</p>				
(d) Regular training programs are offered to ensure sustained awareness and implementation of measures.	<p><i>Summary: One of the functions of the Anti-Corruption Commission is informing and educating the public (A.25 Anti-corruption law). CAC is strengthening its corruption preventive function including awareness raising about principles of and instruments for countering corruption among public bodies and entities, non-governmental organizations, educational institutions and civil society and training of investigative journalists. Currently the scope of these activities is limited by the availability of resources.</i></p> <p>CAC is charged to carry out publicity campaigns with pamphlets and posters that are publicized in all the public institutions, the use of internet and publicity spots on TV and radio. This public awareness and training activities are listed in the anti-corruption law but they have not been fully implemented reportedly because of lack of resources. CAC did carry out some awareness activities in schools and with the Chamber of commerce. It was noted that the 2022 budget book v.2 identifies among the CAC activities to be pursued in 2022 public sensitization and capacity building in the area of integrity including in schools.</p> <p>Relevant legal excerpts Anti-corruption law 7/2020. A 25 Anti-corruption law: Information and public education</p>		<p>Criterion partially met</p> <p>There are no regular training programs to sustain awareness and implementation of the anti-corruption law only ad hoc dissemination/sensitization events.</p>		<p>CAC to step up these activities in partnership with internal and international stakeholders and deliver these events more regularly (also part of CAC Strategic Plan).</p>

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	<p>1. The Anti-Corruption Commission carries out campaigns of advertising, which include pamphlets and posters to be displayed in all public institutions, the use of the internet, as well as advertising spots on radio and television.</p> <p>2. All public institutions must make available easily accessible information to the public about its organization, functions and services they provide, including information about how a person in the public can file a complaint of alleged acts of corruption, including anonymous reporting.</p> <p>3. The Anti-Corruption Commission works together with the public institutions to ensure that information about measures against corruption is disseminated in the public entities, among the public, non-governmental organizations and educational institutions in order to promote adequate prevention work, as well as the integration of anti-corruption awareness in the curricula of schools and universities.</p> <p>A.26 Anti-corruption law: Training of journalists and investigative journalism</p> <p>1. The Anti-Corruption Commission promotes, encourages and carries out training actions for journalists to promote the competence and independence of journalism and its role as a competent and credible source of information and public education about corruption and efforts to your combat.</p> <p>2. Training also aims at the competent domain and use of the legal regime of access to information by journalists, as a way of enhancing fair and efficient monitoring.</p>				
(e) Conflict of interest statements, financial disclosure forms and information on beneficial ownership are systematically filed, accessible and utilized by decision makers to prevent corruption risks	<p><i>Summary: Both beneficial ownership and asset declaration/financial disclosure are under implementation (as laid out below) and are supported by declaration templates/forms. There are no forms for conflict-of-interest declarations.</i></p> <p>Financial disclosure was launched in 2022 by CAC and there are digitized templates to guide the reporting. https://drbi.cac.tl/declarante/login for confirmation</p>		<p>Criterion partially met</p> <p>While financial disclosure form and beneficial ownership templates have been prepared and are in use there are no templates yet for conflict-of-interest declaration.</p>		Develop forms/templates for the declaration of conflict of interest including by the civil servants that participate in the procurement

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throughout the public procurement cycle.	<p>Beneficial ownership (A 21 of the anti-corruption law) is implemented by Serve I.P, public entity that registers the commercial companies operating in Timor-Leste under the Commercial company law 10/2017 ¹²⁴ – Information on beneficial ownership is also part of the asset declaration/financial disclosure.</p> <p>PPL 2022: A 30 PPL 2022 eligibility, introduces a self-declaration for eligibility – where the bidders confirm that it is not in a situation of conflict of interest or sanctioned for corrupt behavior.</p>				<p>process and the evaluation committee. CAC intends to develop an Integrity Pact which would support this objective. Make sure that the PPL secondary legislation, bidding documents, instructions, include provisions regarding beneficial ownership requirement for its effective implementation.</p>

¹²⁴ Law 10/2017”) published in *Jornal da República* on 17 May 2017:
http://www.mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_19_SUPLEMENTO.pdf

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Methodology for Assessing Procurement Systems (Volume III - ANNEXES)

Timor-Leste

Public

Procurement

System

May 15, 2023



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MAPS

Methodology for Assessing
Procurement Systems

Assessment of Timor-Leste Public Procurement System

CONCEPT NOTE – SEPTEMBER, 2020

Annex 2: Composition of Assessment Steering Committee/Team/ Officials Met

Members of Assessment Steering Committee:

Institution	Name	Designation	Email	Function
MoF	Mr. Martinho Lopes	Director General PFM Reform and MAPS Focal Person	mlopes@mof.gov.tl	Chair
CNA	Mr. Hermingrdo	Director	—	Member
	Mr. Rana Latif	Procurement officer	rlatif@cna.gov.tl	Member
State Ministry				Member
Ministry of Public Works (MPW)	Mr. Quntiliano Belo	Director National – Procurement Directorate	ddel1981@gmail.com	Member
Ministry of Planning MPS ADN	Mr. Livio B Soares	MoF- DNA	—	Member
Ministry of Health (MOH)/SAMES	Mr. Rafael Ximenes	SAMES Director	—	Member
RAEOA	Mr. Korolus Lafu	RAEOA - Procurement	sar.carloslafu@gmail.com	Member

Members of Assessment Team:

Function	Institution	Name	Designation	Email
Lead/TTL	World Bank	Ahmed Merzuk	Lead Procurement Specialist	amerzouk@worldbank.org
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Function	Institution	Name	Designation	Email
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		Lucio dos Santos	National Consultant	luciodossantos212@gmail.com
	World Bank	Irina Luca	Lead International Consultant	iluca@worldbank.org
		Susie Smith	Legal Consultant	susiewsmith@gmail.com
		Solange Borges	National Consultant	lolaborges1102@gmail.com

List of Agencies/Officials Met:

#	Name	Position	Agency
1.	Mr. Martinho Lopes	Director General PFM Reform	Ministry of Finance (MoF)
2.	Mr. Aniceto do Rosarin	Procurement Adviser	MoF
3.	Mr. Livio B Soares		MoF- DNA
4.	Mr. Sothun Thay	IFMISU - Adviser	MoF - IFMIS
5.	Mr. Valdomar		MoF- Training Centre
6.	Mr. Hermingardo Soares	Director	Comissao Nacional do Aproveitamento (CNA)/National Procurement Commission (NPC)
7.	Mr. Nelson	Procurement Officer	CNA
8.	Mr. Rana Latif	Snr. Procurement Adviser	CNA
9.	Mr. Rafael Ximenes	Director	SAMES
10.	Mr. Francisco Borges	Director of Procurement	SAMES
11.	Mr. Salvation Lapina	Adviser	SAMES
12.	Mr. Quintiliano Afonso Belo	Procurement Director	MPW/784 90900
13.	Mrs. Jung	Procurement Adviser (international)	MPW
14.	Mr. Matias F Gomes	Procurement Adviser (National)	MPW 77231082/75750961
15.	Mr. Paulino Pinto Gonzaga	Director	MPW 77388060
16.	Mr. Cosme da Costa Araujo	Adviser	MPW 784 74794
17.	Mr. Januario Costa	Technical Officer	Major Project Secretariat 780 10819
18.	Mr. Luis Ximenes	Director	Belun
19.	Mr. Charles Scheiner	Coordinator	Lao Hamutuk
20.	Mr. Joao Alves	Vice President	CCITL
21.	Mr. Jose Guterres	Legal Officer	CCITL Legal
22.	Rui Paicheco	Executive Director	CCITL
23.	Mr. Karolus Lafu	Director of Procurement	RAEOA
24.	Mr. Achmad Aranhado	Adviser	RAEOA
25.	Mr. Tiago Larsen	MoF Legal Adviser	Consultant

#	Name	Position	Agency
26.	Ms. Delbina	Tribunal de Recurso	Procurement Unit
27.	Ms. Joanhina	Tribunal de Recurso	Finance unit
28.	Mr. Gil Alves	Vice President of CCTL	Chamber of Commerce Timor-Leste
29.	Mr. Rui Paicheco	Executive Director	Chamber of Commerce Timor-Leste

Annex 3: Stakeholder Analysis

Analysis of key Institutions and Stakeholders

Mapping of the key public procurement stakeholders and their roles in operating the public procurement system. Public procurement cuts across multiple sectors and social interests hence the number of stakeholders involved is quite substantial and diverse. The mapping of the key stakeholders in Timor Leste based on their roles and responsibilities is presented in the table below. They include the MOF departments that perform normative and regulatory functions in the area of public procurement (for example, Legal Department, PFM Policy, IT, and the National Procurement Commission); the procuring entities (ministries, agencies, departments at the central and local level); agencies in charge of external and internal audit and oversight (Chamber of accounts, MOF Internal audit, General State Inspector); the planning and budget bodies (National Directorate of Budget/National Directorate of Payments, Planning, Monitoring and Evaluation Unit – UPMA (now ANAPMA); Infrastructure Fund institutions (Major Projects Secretariat, National Development Agency); research institutes and academia and training institutions (National University of Timor-Leste, Dili Institute of Technology); integrity institutions (Anti-Corruption Commission, Ombudsman, Civil Service Commission); the private sector companies, represented by the Chamber of Commerce of TL and various private sector associations; the civil society organizations, organized under the NGO Forum of Timor-Leste (Fongtil); and development partners active in TL.

Timor-Leste MAPS: Key Stakeholders

Type of function or institution	Name of Institution in the country
Authority in charge of the assessment	MOF
Institution in charge of the normative/regulatory function for public procurement	MOF
Administrative/judicial review (appeals) body for procurement	Hierarchical appeal/courts
Selected number of procuring entities (selection can be made based on regional or thematic focus of assessment)	<ul style="list-style-type: none"> Ministry of Public Works (MPW) Ministry of Planning and Strategic Investment Ministry of Health MOH)/SAMES Ministry of Social Solidarity, Ministry of Education (MSS) Ministry of State Administration/MUNICIPALITIES Ministry of Education, Youth and Sport National Procurement Commission Comissão Nacional de Aproveitamento (CNA)
Centralized procurement body, if any	SAMES central for the procurement of health goods.
Authorities responsible for budgeting, payment and financial procedures and PIM	<p>MOF General Directorate of Planning and budget <i>Direção-Geral de Planeamento e Orçamento (DGPO)</i> MOF Treasury - <i>Direção-Geral do Tesouro</i></p> <p>Planning, Monitoring and Evaluation Unit - UPMA <i>Unidade de Planeamento, Monitorização e Avaliação</i>; in 2021 became the National Agency for Planning, Monitoring and Evaluation <i>Agência Nacional de Planeamento, Monitorização e Avaliação, (ANAPMA)</i></p>

Type of function or institution	Name of Institution in the country
	Major Projects Secretariat - <i>Secretariado de Grande Projetos (SGP)</i> National Development agency: <i>Agencia de Desenvolvimento Nacional (ADN)</i>
Authorities in charge of internal and external controls and audits	MOF: Internal audit: <i>Gabinete de Inspeção-Geral (GIG)</i> MOF State General Inspector - <i>Inspetor Geral do Estado</i> reports to PM Chamber of Accounts (external auditor): <i>Câmara de Contas (CdC)</i> Commission A and Commission C promoting public sector ethics, and enforcing oversight on budget and public financial management respectively, Prosecutor General's Office
Anti-corruption agencies	Anti-Corruption Commission - <i>Comissão anti-corrupção (CAC)</i> Ombudsman <i>Provedoria</i> Civil Service Commission - <i>Comissão da Função Pública (CFP)</i>
Competition bodies, for example, Competition Commission	N/A
Authority responsible for Public Private Partnerships	MOF: - PPP Unit (<i>Direção Nacional de Parcerias Público-Privadas</i>) under the Directorate General for External Resource Mobilization and Management,
Public Service Commission	Civil Service Commission - <i>Comissão da Função Pública-CFP</i>
Training institutions	MOF: PFM training unit - Centro de Capacitação de Gestão das Finanças Públicas;
Procurement professional body	N/A
Representatives of private sector	The Chamber of Commerce and Industry of Timor-Leste A <i>Câmara de Comércio e Indústria de Timor Leste (CCI-TL)</i> Private sector associations (<i>Asosiasaun Emprezarial Feto Timor-Leste (AEMTL)</i>). National and international companies active in public procurement (RENARDET SA, CalTech General Contracting and Offshore Services, ENSUL, RMS Engineering and Construction, Delloite, KM Consulting/Environmental Consulting, SDV Logística Internacional, and so on).
Representatives of civil society	<ul style="list-style-type: none"> • NGO Forum of Timor-Leste (FONGTIL) , • Lao ' Hamutuk, • FMA (Foundation for Media Alternatives) • Luta Hamutuk • Belun • Centro de Estudos para a Paz e o Desenvolvimento (CEPAD).
Research institutions, Academia, media	<ul style="list-style-type: none"> • National University of Timor-Leste (UNTL) • Dili Institute of Technology (DIT) • Radio and Television Timor-Leste (RTTL) • Grupo Media National (GMN) TV

Type of function or institution	Name of Institution in the country
International partners engaged in procurement in the country (if applicable and not already otherwise involved in the assessment, for example, through the Technical Advisory Group).	JICA, ADB, MCC, USAID, EU, UNDP, DFAT, NZAID, KOICA, UN agencies.; MOF/DGMMRE (Direção Geral de Mobilização de Recursos Externos).

Objective:

- Understanding and balancing stakeholders' interests and expectations related to public procurement and identifying (Government and private sector/civil society) champions who are critical to its success.
- Incorporating in the final assessment stakeholders' concerns and suggestions.
- Keep Stakeholders engaged after completion of the assessment in the strategic planning process and its implementation.

Process of Identification of Stakeholders:

- Overall communication with stakeholders was virtual and the COVID -19 and lockdown limited the opportunities of inter-action. In the absence of a preparation mission– the stakeholders mapping was conducted based on desk review of Timor-Leste government documents, IFIs studies and initial interaction with MoF. The list prepared in the planning stage was completed with additional stakeholders identified throughout the MAPS preparation.

Stakeholders' analysis: key stakeholders and their expected contribution in improving Public Procurement System (PPS) of Timor-Leste. Based on their functions, interest and influence in the area of public procurement (see description below by stakeholder), the stakeholders can be grouped in three categories: (i) the main actors that lead the procurement agenda are: MoF, agencies in charge of centralized procurement (SAMES, CNA), line ministries, municipalities in cooperation with the infrastructure fund and ADN; (ii) another category are those that perform (or could perform) important functions for public procurement (oversight agencies, academia, anti-corruption) and/or whose policy impact public procurement (CFP, PGR); a cooperation/feedback mechanism is required with these agencies to secure mutually reinforcing agendas in areas that impact procurement; and (iii) finally there are stakeholders which need to be engaged and informed to improve procurement outcomes through effective participation and oversight (private sector, CSOs) and through technical assistance and financial support (Development Partners).

Ministry of Finance:

The Ministry of Finance is the “apex” agency:

- In charge of the normative and regulatory function for public procurement and procurement reform agenda.
- In charge of the country's Public Private Partnership (PPP) operations jointly with SGP.
- Leads the MAPS assessment, responsible for MAPS validation and the implementation of MAPS findings and recommendations.

Key MOF departments that have active roles in reforms and are interested to be active participants in the MAPS findings and recommendations:

- National Procurement Commission, for short called CNA.
 - A key player in public procurement with strong interest in MAPS: a central service of the MoF responsible for carrying out procurement processes for high value projects, as defined by law, as well as monitoring and technically assisting the remaining procedures carried out within the scope of all public entities; it is also responsible for the standardization of procedures and the issuing of guidelines, model documents and templates among others; create and maintain data bases with potential and actual bidders, awardees, private companies registry, fines and sanctions applied under the sanction regime.
- Legal Support Office (*Gabinete de Apoio Jurídico - GAJ*) is the MOF 's central service responsible for developing and seeking approval on proposals for legal and public regulations and proceeding with its dissemination once approved.
- The Office of Reform Policy and Capacity Building in PFM (*Gabinete de Política de Reforma e Capacitação em Gestão das Finanças Públicas - CPRCGFP*) is also assigned a role in updating and improving procurement policy and procedures.
- Office of Integrated Systems of Financial Management Information (*Gabinete de Sistemas Integrados de Informação de Gestão Financeira – GSIIIGF*) is the MoF central service responsible for the development of and management of an integrated management information system financial services in all services and bodies of the public administration.

Large Projects Secretariat (SGP)

- SGP is assigned the public investment management function for large projects under the Infrastructure Fund by reviewing the line ministries project proposals, feasibility studies and economic analysis as part of the budget formulation process.
- Plays a key role in PIM, high interest in public procurement. Informed and consulted during the procurement process and responsible for the approval of payments.
- Strong interest in MAPS as relates to impact on large infrastructure projects.

National Development Agency (ADN)

- Is a key player in PIM – ADN is charged to supervise, verify and certify capital development projects, as well as their execution, in coordination with the relevant ministry.
- Key contributor to MAPS.
- High interest in outcome related to ADN oversight role.

Planning, Monitoring and Evaluation Unit (UPMA) –in 2021 was replaced by ANAPMA National Agency for Planning, Monitoring and Evaluation:

- Has a strategic role in coordinating, supervising the planning, monitoring and evaluation process of the policies and programs of all Government.
- Strong interest in procurement planning and the linkage of procurement planning and budget planning.

- Needs to be consulted.

Ministry of Public Works (MoPW):

- Operational expertise in public procurement.
- Strong interest and influence in the improvement of the public procurement system.
- Key role in validation and implementation of MAPS findings and recommendations.

Procuring Entities:

- Operational expertise in public procurement.
- Data and institutional memory information holders on actual implementation and performance of the legal and regulatory framework as procuring agencies.
- Key potential partners for bringing improvements to procurement process under MoF leadership.
- Direct interest and influence on development of public procurement system
- Role in data collection and validation and implementation of MAPS findings and recommendations

Internal audit/MOF *Gabinete de Inspeção-Geral (GIG)*

- Conducts procurement oversight.
- Promotes compliance and transparency for a well-established and functioning public procurement system.
- Needs to be engaged.

Supreme Audit Institution/*Camara de Contas*:

- Strong procurement component in its oversight function.
- High interest in a well-established and functioning of Public Procurement System.
- High influence as procurement oversight agency.
- Needs to be engaged.

Anti-Corruption Commission (CAC)

- Autonomous state institution.
- Strong mandate and interest to safeguard the integrity of the county's public procurement system.
- Interest in sound public procurement system reform.
- Great capacity to influence and support the integrity aspects of procurement.
- Active participant in MAPS preparation and validation.

General Prosecutor Office (PGR)

- Recipient of the fraud and corruption cases and “the owner” of the criminal proceedings, in charge of investigations.
- High influence given its role in prosecuting procurement corruption cases.
- To be engaged in the finalization and implementation of the strategic plan.

Civil Service Commission (CFP)

- Key role in the quality of procurement cadre and future professionalization.
- In collaboration with CAC plays a key role in preserving integrity in procurement.
- High influence in relation to the HR issues.
- To be consulted and engaged in the finalization and implementation of the strategic plan.

Private Sector:

- Strong interest in the public procurement system reform
- Provides opinion on public procurement system through survey and feedback (face-to face).
- High interest in how MAPS outcomes impact the private sector agenda.

Civil Society Organizations:

There are no CSOs that have procurement in their scope of activity. However there are CSOs involved in PFM, advocacy, capacity building, anti-corruption. Core Group Transparency, CEPAD Centre of Studies for Peace and Development, LABEH- Lalenok Ba Ema Hotu. Lao Hamutuk, JSMP Judicial System Monitoring Program. They could, and some expressed interest, to become more engaged in the area of public procurement.

Needs to be engaged and nurtured to monitor public procurement.

Academia and Training institutions:

- Interested to partner in training of procurement cadre.
- Needs to be engaged in implementation of capacity building reforms.

Media:

- Potential interest in public procurement oversight
- Influence on the public opinion.
- Needs to be engaged in the monitoring of public procurement.

Development Partners:

- Engaged in areas that form the object of this MAPS assessment.
- High interest in MAPS assessment that can be used to guide future engagement.

There were limitations in engaging stakeholders because of the COVID pandemic and the predominantly virtual nature of this MAPS assessment - the so Assessment Team engaged key stakeholders mainly through virtual sessions.

Annex 4: Feedback/Voices from Private Sector- Results of Survey

1. Methodology of Survey

Objective of the Survey: MAPS assessment methodology recommends the use of surveys to seek feedback from private sector and other stakeholders on the following aspects:

- (a) Perception that the institutions in charge of the normative functions and procuring entities regarding **conflict of interest in its functions and responsibilities** (sub-indicator 5(d) on Avoiding Conflict of Interest).
- (b) Perception of **openness and effectiveness of the public sector** in engaging with the private sector (sub-indicator 10 (a) on dialogue and partnership between public and private sector).
- (c) Perception about the appropriateness of conditions in the **public procurement market** such as access to credit, procurement methods and procedures, contracting provisions, fair payment provisions, existence of effective appeals mechanism and dispute resolution in the law (indicator 10 (b) on private sector's organization and access to public procurement).
- (d) Perception that the **appeals system is trustworthy** and appeal decisions are consistent with the findings of the case and with the available remedies provided in the legal/regulatory framework (sub-indicator 13 (c) on decisions of the appeals body).
- (e) Perception about **unethical practices** including making gifts (sub-indicator 14c) and effectiveness of sanctions and enforcement system.
- (f) Perception of favorable opinions by the public on the **effectiveness of anti-corruption measures** (sub-indicator 14d on Anti-corruption framework and integrity training).

In brief, the objectives of the survey are:

- Evaluate contractors, suppliers and consultants' awareness about bidding opportunities and experience when bidding on government or donor-financed contracts.
- Assess the reasons that may encourage or discourage firms from submitting bids.
- Determine awareness of the complaint mechanism.
- Gauge firms' perceptions regarding fraud and corruption risks in procurement; and
- Overall, facilitate the dialogue and partnerships between public and private sector through outreach and training programs to improve public procurement systems in the country

2. Survey planning: A survey questionnaire was to be prepared, adapted to Timor-Leste conditions and posted online. The Chamber of Commerce was to advise the private sector associations about this opportunity and the associations reach out to their members. In case there was no sufficient response to the survey the backup plan was for the MAPS team to randomly select about 40 firms out of a list of contractors/suppliers/consultants, including a mix of firms (large, medium and small size) registered in the capital city and other major cities. The list was to be provided by private sector associations. The objective was to include (a) Contractors: such as Building contractors, road construction/rehabilitation, irrigation and water supply contractors; (b) Suppliers: IT equipment, medical equipment, furniture, vehicles (cars,

machinery such as tractors and bulldozers); and (c) Consultants: architectural design, construction supervision, finance and business.

3. The following steps were envisaged:

- MoF with the support of the MAPS team to distribute the questionnaire to the **identified** firms by sending the questionnaire electronically to the targeted audience;
- Firms to send their response confidentially without identification of source of response to the World Bank Country Office (the WB coordinator to set up a website/e-mail account);
- Based on the results of surveys, MAPS Team to prepare a report/presentation highlighting the main issues identified and analyze the issues.
- The results of survey and interviews to be used for MAPS Assessment Report.

4. Actual survey process and outcomes: An electronic survey was launched in mid-August 2022. The response to the electronic survey was meager because of internet access by private sector companies and the difficulty to advise the potential respondents on this opportunity. Since only two responses were obtained efforts were made with the support of the Chamber of commerce and *Assiasaun Emprezarial Feto Timor-Leste* -AEMTL to invite contractors to the WB office and obtain their input after providing guidance on how to fill in the questionnaire. In the end 14 companies provided their input as further detailed below.

Most of the respondents represented small companies with 1-10 employees. Private sector representatives feedback is captured in the figures 1-8, below.

Figure 1: Number of employees

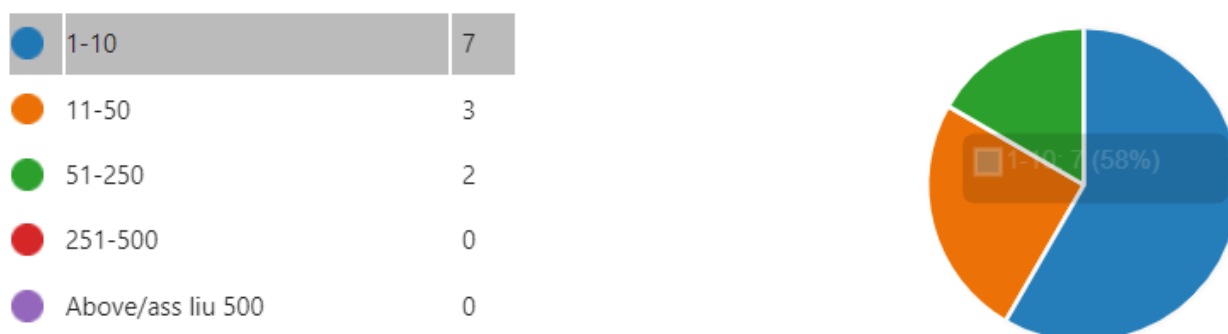


Figure 2: Sectors represented

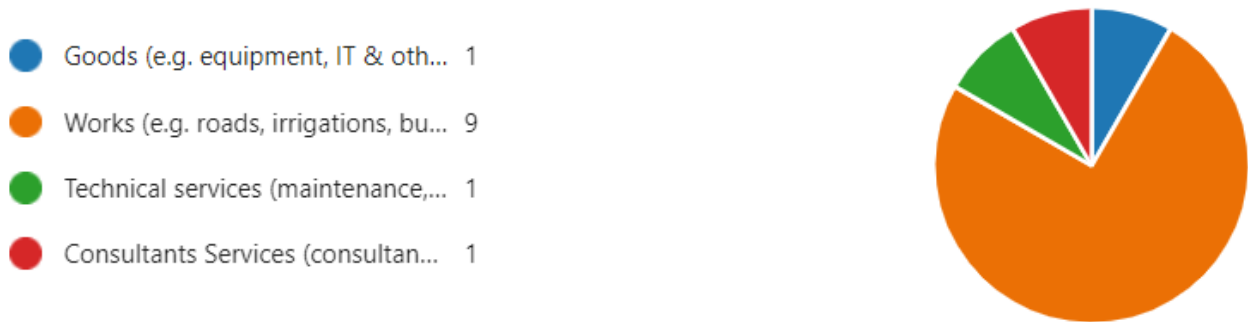


Figure 3: Government communicates policy changes Figure 4: Private sector has access to changes

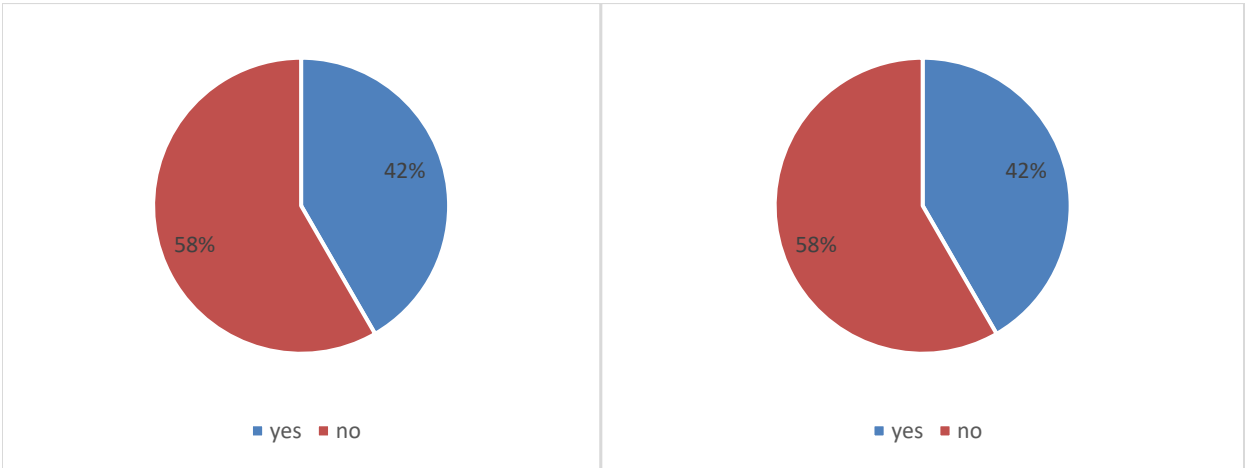


Figure 5: Awareness about training Figure 6: Reasons for not filing complaints

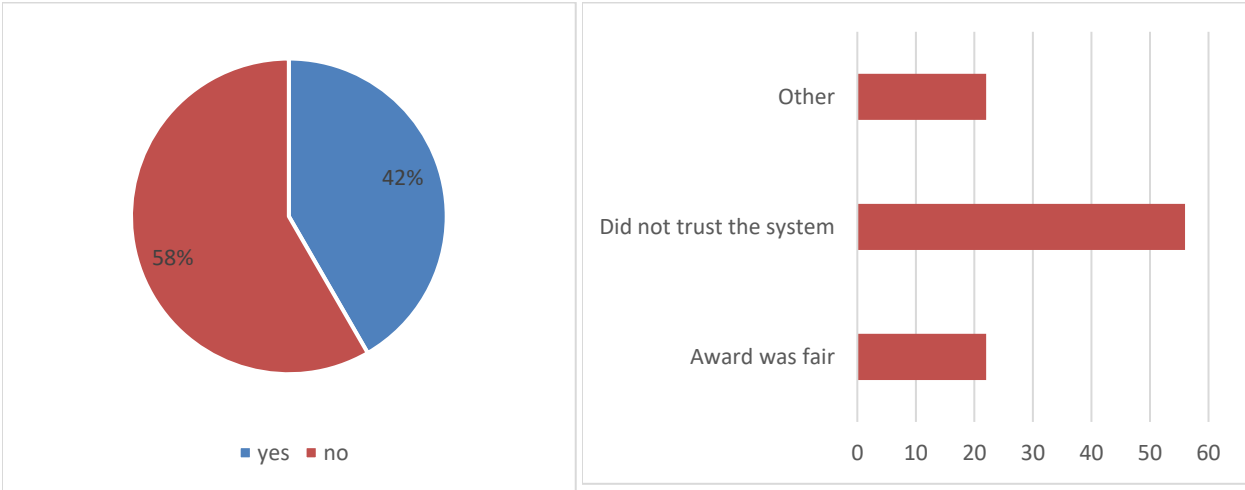


Figure 7: Private sector perception of public procurement constraints

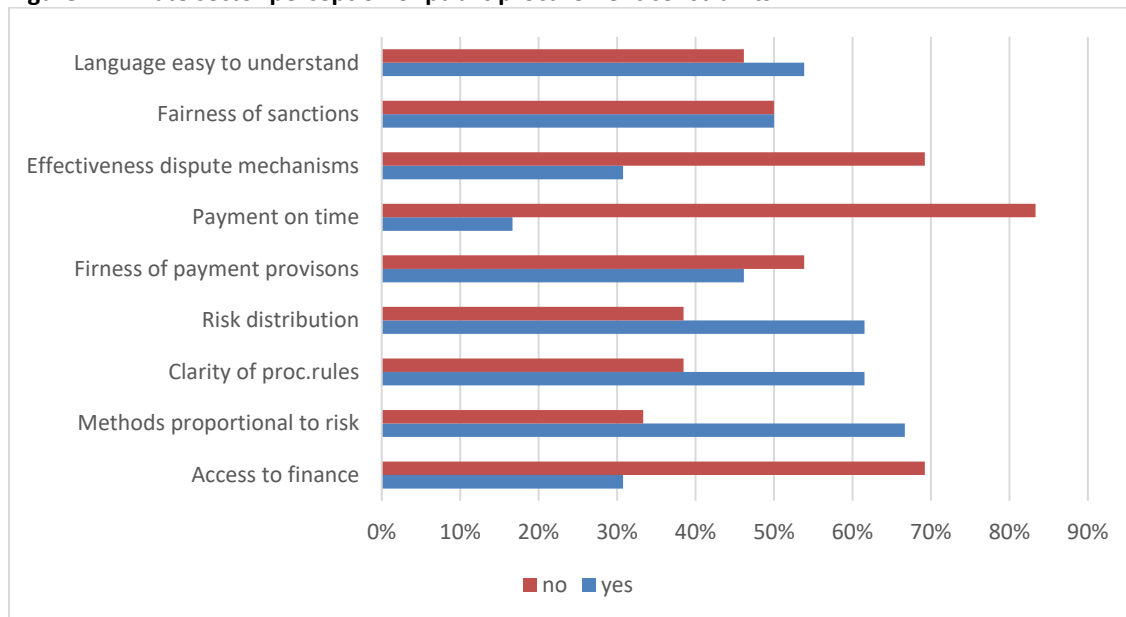
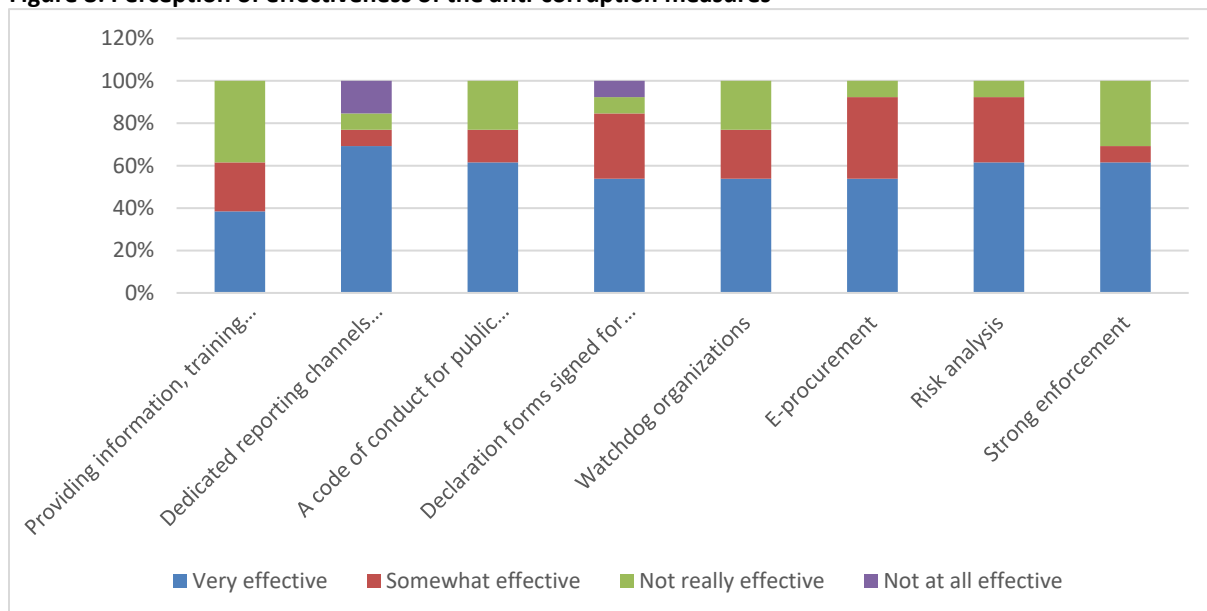


Figure 8: Perception of effectiveness of the anti-corruption measures



Annex 5: Summary of Feedback from CSO Consultations

Compared to the country population the number of CSOs in Timor-Leste is quite significant and as confirmed by the Timor-Leste Roadmap for Engagement with Civil Society 2016–2020 civil society capacity has grown notably.¹ There are quite a few CSOs involved in policy, advocacy, education and social audit. CSOs also implement projects and activities with and for the government. More recently, CSOs have been active in monitoring and auditing government projects. While the involvement in public procurement is sporadic, some CSOs expressed their interest of acquiring more knowledge and having a deeper engagement in this area.

A meeting with CSOs was held on December 15, 2021. The objective of consultation among other things was to explore: (i) if/how CSOs are acting as safeguard against inefficient and ineffective use of public resources; (ii) how CSOs could help public procurement to be more competitive, fair, transparent, improve contract performance and secure results; and; (iv) how to improve engagement of CSO through participation, monitoring and oversight.

Here are some insights from this meeting:

- Information about procurement process and contracting is not available to allow for effective public procurement monitoring by civil society; perception is that it has become less available in recent years.
- CSOs did not attend bid public opening meetings.
- One CSO protested the intention of award, and no response was obtained.
- Sometimes there is CSO consultation when laws are passed; only invited CSOs can attend or speak at Parliamentary hearings. There is no consultation or participation in decree-laws enacted by the Council of Ministers, whose meetings are closed. Occasionally an agency or ministry will circulate a draft law for comment, but this is rare and there are no consistent mechanisms.
- **Recommendation on the PFM agenda:** Reduce number of autonomous agencies. Reduce public transfers to institutions. Make the budget transparency portal downloadable. Provide some visibility and consultation before October when the budget proposal is submitted to Parliament. Update the Government results portal and use results rather than expenditures to evaluate investment projects performance.
- **Recommendations regarding the procurement agenda to improve accountability and transparency:**
 - **Provide more information in Tetum** in accessible places -- the MF and government websites are very cumbersome.
 - Improve the **e-procurement portal** – completeness, accuracy, timeliness, downloadability, searchability (by name or word, not just id number), links to documents.
 - **The MoF web list of “current tenders”** <https://www.mof.gov.tl/category/current-tenders/?lang=en> should be more complete and accessible, searchable, with links to documents. Make the information and documents searchable text, not images. Archive (don't delete) older ones.

¹ 2018, European Union. *Timor-Leste Roadmap for Engagement with Civil Society 2016–2020* (update 2018). https://eeas.europa.eu/headquarters/headquarters-homepage/50970/timor-leste-roadmapengagement-civil-society-2016-2020-update-2018_pl.

Annex 6: Sample Cases

Objective: The objective of this exercise is to collect empirical evidence on how procurement principles, rules and procedures formulated in the legal and policy framework are being implemented in practice. It focuses on procurement-related results that in turn influence development outcomes, such as value for money, improved service delivery, trust in government and achievement of horizontal policy objectives as per guidance provided under MAPS 2018.

Scope of the assessment, approach for case samples: The assessment of Indicator 9 recommends the selection and review of a sample of actual procurement transactions (files). The MAPS assessment attempted to cover a number of procurement cases sampled from government ministries, government departments and municipalities.

The approach to data collection and analysis. To collect quantitative information and meet the recommended evidentiary standard of the MAPS assessment, efforts have been deployed by the MAPS Team with the Government support to collect quantitative information. A template was sent to the:

- central procurement agency CNA (that is in charge of procurement for contracts above 1 mil\$ and all contracts under the Infrastructure Fund) to obtain the information during the procurement process until the contract signature.
- to the MoPW to obtain information on the contract implementation stage.
- to Mof/IFMIS for quantitative data on contracts that are not included in the above,

After reviewing the data obtained from MoPW, CNA and IFMIS (procurement module) the Assessment Team concluded that the data did not provide sufficient and reliable information to generate robust quantitative indicators as recommended under the MAPS methodology, for lack of consistently and accurately recording the actual milestones and values from procurement launch to contract completion. This is largely due to a lack of a standard for agencies to record the information by contract (including when procurement actions are segregated from contract management) and ensure that a set of complete data is maintained, ideally at the project owner level.

Annex 7: Validation

A validation meeting was held on October 27, 2022, in the Ministry of Finance, chaired by the Minister of Finance, in the presence of representative of the Government, private sector, civil society and Development partners. The following are the participants at the meeting:

#	Name	Agency	Position/title
1.	Batista da Silva	MSC	Director
2.	Alex Tilman	United Nations Resident Coordinator Office	PDFO
3.	Maria de Fatima Belo	Associação Empresarial das Mulheres de Timor-Leste (AEMTL)-Timor-Leste Business Women Association	Vice President
4.	Carla Tilman	AEMTL	Member
5.	Licia Yani	Ministerio Administrasaun Estatal	Director
6.	Hermingardo Soares	National Procurement Commission	Director
7.	Nelson dos Santos	National Procurement Comission	Adviser
8.	Bernadino Perreira	United Nations Development Program	Program Manager
9.	Dionisio Guterres	DNA-MOP	Director
10.	Christopher	NGO LABEH	Director
11.	Jose de Carvalho	NGO LABEH	Chief
12.			
13.	Jose Amaral	MOP	DNF
14.	Jeremias do Gama	MF	DJ
15.	Geraldo M. da Silva	ADB	Operations Assistant
16.	Joao	CEPAD	Chief
17.	Sothun Thay	MOF-IFMISU	IT Adviser
18.	Onorio dos Santos	MOF-IFMISU	Chief of IT Departement
19.	Florbela Guterres	MOF-IFMISU	IT Officer
20.	Rui Pacheco	CICTL/Chamber of Commerce	Chief Executive
21.	Agustinho Castro	MPO	Director General
22.	Ubalda Garcia	CFP	Chief Departement
23.	Jose Alves da Costa	Luta Hamutuk	Director
24.	Francisco Soares	Australian Embassy	
25.	Sobari G. Nunes	Australian Embassy	Senior Program Manager
26.	Mario Machado	EV	Program Manager
27.	Rafael Ximenes	SAMES	Chief of Departement
28.	Tiago Larsen	MOF	Legal Adviser
29.	Joanico Pinto	MOF	Director General
30.	Maria Filipe de F. Gaio	MOF	Staff.DGT-ADGS
31.	Romaldo Caitano	Belun	Program Manager
32.	Jonathan	Lao Hamutuk	
33.	Filipe Henrique	US Embassy - MCC	PMS
34.	Furtunata Molina	CCI-TL	Media
35.	Elisey da Cruz	CCI-TL	Media
36.	Irene A.M. Santana	National University	CD.P-CE CP
37.	Virginia Ximenes da Silva	National University	CD.JCP.A
38.	Mateus Elo	RAEOA	Procurement Officer
39.	Karolus Lafu	RAEOA	Chief Procurement

#	Name	Agency	Position/title
40.	Higies	TR	DG
41.	Jaime Tilman	TR	DGFP
42.	Nelson G. Castro	MOH	Procurement Director
43.	Sunil Mitra	ADB	Country Manager
44.	Keiko Koiso	ADB	Senior Procurement Specialist
45.	Elsty D. Morato	ADB	Social Protection Officer
46.	Angelica Freitas	CCI Municipio Ermera	President
47.	Julio S. Lay	CCI Municipio Manatuto	President
48.	Leoneto Florencio	Ministry of Finance	
49.	Venceslau Q. Guterres	Ministry of Finance	Director General FMISU
50.	Alice Maria Celia	Ministry of Finance	
51.	Justino B. Amaral	CFP	TP. Procurement
52.	Ernesto da C. Silva	Ministry of Finance	Inspector
53.	Octavianus S. de Carvalho	DFAT	Senio Program Officer
54.	Romario Xavier	NGO – Belun	Media staff
55.	Arnaldo S. da Ressuricao	MOF- DGSC	Technical staff

The Chair recognized the effort of the joint team composed of MoF, World Bank and ADB experts, that was able to bring this important assessment to a successful completion despite the multiple challenges including the COVID lockdown. It further underscored the importance of this exercise in bringing international best practices to Timor-Leste procurement to improve its performance.

The joint Assessment Team made a comprehensive presentation of the findings and recommendation of the MAP assessment including the proposed strategic action plan (see below).



Assessment of the Timor-Leste Public Procurement System

Validation Workshop

October 27, 2022



The presentation was followed by a rich discussion with interventions from the Government agencies representatives, private sector, civil society, development partners. Overall, the meeting validated the findings of the MAPS assessment. The following comments are highlighted as priority areas underscored by the participants:

Sustainability and public procurement: Civil society representatives underscored the sustainability aspects of public procurement and the importance of stakeholders' engagement in this process. The team provided more context on the importance of this agenda for Timor-Leste and the Government using public procurement to pursue economic, social, environmental development goals (promoting jobs, capacity development, innovation, climate change, gender and minorities). For the effective implementation of sustainable procurement, the team emphasized the need to develop a public procurement sustainable strategy and action plan, including guidance to practitioners. The team acknowledged the importance of engaging stakeholders and the fact that availability of information is key to allow for stakeholders' involvement in shaping and monitoring this agenda.

Private sector participation: The Chamber of Commerce and Industry elaborated on the importance of a strong private sector in Timor-Leste capable of participating successfully in the public procurement market. It further commented on the importance of supporting the country in developing a private sector classification registry to accurately categorize private companies according to their experience and financial capacity to deliver on contracts. The team elaborated on other countries' experience and how such good-practice information can be shared to benefit Timor-Leste. It further mentioned the importance of consultation with the private sector, including MSMEs and helping them strengthen their capacity to bid. Finally, it pointed to transparency as key to allowing input from non-state stakeholders to support a robust procurement system.

How MAPS is balancing the findings, recommendations with how to implement them including how recommendations are translated into policies. The team clarified that MAPS is one stage of the reform process. It identifies the gaps and makes recommendations – some are more straightforward; others require a deeper analysis which goes beyond the MAPS scope. For instance, adopting an appeal mechanism or creating a monitoring mechanism to ensure the leadership and cohesion of the public procurement system require a deeper analysis that cannot be addressed during a MAPS assessment. Now that the MAPS has identified the key recommendations (including some actions to support them in the short and medium/long term) the next stage is for the Government with the support of the Development Partners to further break down the proposed MAPS strategic action plan into activities and establish priorities and timelines consistent with the Government broader objectives and resources available.

Some participants commented on the lack of information on the performance of public procurement system and the lack of data to measure it including lack of information on the volume of public procurement. The team confirmed that, while there are efforts to build public procurement data sets, there is no reliable data to monitor the performance of public procurement nor statistics of its annual volume. To make up for this lack of data the team explained how it arrived at a rough estimate the "procurable" value of public expenditures. MAPS identified the lack of robust data as a key material gap and one of the recommendations of the MAPS is to develop systems that are is to capture reliably procurement data –that is, a comprehensive one based on e-procurement, but also intermediate ones based on existing systems whose quality can be improved.

In its final intervention, MoF recognized the contribution of the MAPS exercise in providing valuable input to the new public procurement law. MoF also acknowledged the assessment findings related to the lack

of implementation of key requirements under the existing law, including the fragmented nature of the Timor Leste legal framework. MoF further explained the long and laborious process in drafting the new law as it was subject to multiple amendments based on inputs received and the effort to adjust it to Timor-Leste. While acknowledging that the law did not address all the gaps identified by the MAPS assessment, MoF emphasized the progress achieved in consolidating all the fragmented legislation, streamlining and providing additional provisions in line with international standards. MoF is focusing now on the implementation arrangements, aligning incentives and identifying available resources. While it was recognized that this process will require time and resources and will not happen overnight; priority actions include strengthening CNA capacity; actively disseminate the new law to key stakeholders, preparing a manual to help practitioners interpret the new law and updating the bidding documents consistent with the new law and translate them in Timor-Leste official languages.

The validation process underscored the fact that MoF will be the champion for priority actions starting with the implementation of the new law and improving the systems. It will be supported in its undertakings by the SGP, AND, and the procuring entities. The private sector (including the women association) seemed quite interested to provide support to the reforms that would promote a more effective participation of the private sector in the procurement market. Some CSOs showed particular interest in adding to their activities a procurement agenda. Although not in the validation, in bilateral discussions, CAC showed particular interest in supporting the procurement integrity agenda including through the development of an integrity pact.

Annex 8: Letter of Request from the Government



República Democrática de Timor-Leste
Ministério das Finanças



Gabinete
Vice-Ministra
N.º 269 /GVMF/VIII/2019-07
Date, 19 July 2019

Mr. Macmillan Anyanwu
Country Representative
World Bank Timor-Leste
Dili, Timor-Leste

Copy: His Excellency Prime Minister of RDTL, Taur Matan Ruak

Dear Mr. Anyanwu,

The Government is deeply committed to improving the quality of public expenditure so as to be more effective carrying out Government's functions, particularly those related to promoting development and equity, with the purpose of reducing poverty levels and improving the well-being of the people of Timor-Leste.

Particular attention will be given to procurement spending, which is essential both for improving efficiency and for ensuring transparency and integrity in the use of public resources. The Government proposes to modernize the Procurement Law and to continue strengthening capacity with a view to enforcing the best international standards in public procurement.

The recently concluded 2016 TL PEFA Assessment confirms that Procurement is a critical area of the PFM System. It was found that there were no data available to assess some dimensions (Procurement methods, Public access to procurement information) of the indicator related to procurement and the Assessment Team recommends a MAPS assessment. Available data from previous studies, namely Public Expenditure Reviews, points out that the enforcement of adequate standards in procurement would greatly benefit the quality of public expenditures.

10th Floor, MoF Tower, Aitarak-Laran, Dili, Timor-Leste
Website - www.mof.gov.tl

Following this recommendation, I hereby request the support of the World Bank to conduct a MAPS assessment in order to gain a better understanding of the weaknesses and vulnerabilities of the Government's procurement system and design an Action Plan.

I thank you for your support and collaboration, and I look forward to continuing our fruitful collaboration on this additional project.



Sara Lohá Brites
Vice-Minister and Acting Minister of Finance

Annex 9: List of Documents Reviewed

Legal documents	
Constitution	Constitution of the Democratic Republic of East Timor (2002) ("Constitution")
	Constituição_Anotada
	Constitution English language version
Codes	
	Código Civil Aprovada pela Lei 10/2011
	Código de Processo Civil e legislação complementar, 2007
	Código Penal, 2 nd ed 2010
	Código do Processo Penal, 2007
Government Decree Laws (DL) (all as amended)	
DL 10/2005	Decree Law No.10 of 2005 Public Procurement Law "PPL 2005" as amended by the following Decree Laws:
<i>Amendments to DL 10/2005</i>	
<i>DL 14/2006</i>	<i>No.14 of 2006</i>
<i>DL 24/2008</i>	<i>No.24 of 2008</i>
<i>DL 01/2010</i>	<i>No.1 of 2010</i>
<i>DL 15/2011</i>	<i>No.15 of 2011</i>
<i>DL 38/2011</i>	<i>No.38 of 2011</i>
<i>DL 30/2019</i>	<i>No.30 of 2019</i>
<i>DL 5/2021</i>	<i>No.5 of 2021</i>
Other DL	
DL 11/2005	Decree Law No.11 of 2005 Public contracts legal regime
DL 12/2005	Decree Law No.12 of 2005 Administrative infractions of the Procurement Judicial Regime
DL 02/2009	Decree Law No.2 of 2009 Special regime for Drugs and health equipment procurement (SAMES) as amended by Decree Law DL 12/2016
DL 29/2009	Decree Law No.29 of 2009 Priority projects
DL 02/2010	Decree Law No.2 of 2010 Special procurement procedures for awarding construction work up to USD 250,000 to local companies located in sub-districts
DL 03/2010 <i>Repealed by DL 14/2011</i>	Decree Law No.3 of 2010 Organic Law on Procurement Follow up commission and procurement technical secretariat <i>Repealed by DL 14/2011 establishing the National Procurement Commission</i>

DL 14/2010 Repealed by DL 14/2011	Decree Law No.14 of 2010 Temporary procurement measures Repealed by DL 14/2011
DL 26/2010	Decree Law No.26 of 2010 Contractor Registry Regime
DL 27/2010	Decree Law No.27 of 2010 Construction Companies and Technical Consultants Certification and Registry Regime
DL 05/2011	Decree Law No.5 of 2011 Environmental Licensing
DL 08/2011	Decree Law No.8 of 2011 Regulating the Infrastructure Fund
DL 11/2011	Decree Law No.11 of 2011 National Development Agency
DL 12/2011	Decree Law No.12 of 2011 Human Capital Development Fund
DL 14/2011	Decree Law No.14 of 2011 Establishing the National Procurement Commission and alteration to Decree Law 10/2005
DL 4/2012	Decree Law No. 4 of 21012 Establishing a District Integrated Planning System
DL 11/2013	Decree Law No.11 of 2013 Procurement of Municipal Integrated Development Plan, Amended by Decree Law No.15 of 2016
DL 14/2010 Repealed by DL 14/2011	Decree Law No.14 of 2010 Temporary Procurement Measures Repealed by DL 14/2011
DL 28/2014	Decree Law No.28 of 2014 Procurement for the Special Administrative Region of Oe-cusse Ambeno
DL 12/2016	Decree Law No.12 of 2016 amending Decree Law 02/2009 on Special regime for Drugs and health equipment procurement (SAMES)
DL 15/2016	Decree Law No.15 of 2016, amending DL 11/2013 Procurement of Municipal Integrated Development Plan
DL 34/2017	Decree Law No.34 of 2017 Economic Activities Licensing - commercial
PPL 2022	
DL 22/2022	Decree Law No.22 of 2022 on “Legal Regime for Procurement, Public Contracts and Related Infringements”
PPP Law	
DL 42/2012	Government Decree Law on [PPP] No.42 of 2012
	Amended by Decree Law no.8 of 2014
DL 02/2014	Decree Law No.2 of 2014 PPP Implementing Law
DL 08/2014	Amending Decree Law no.42 of 2012
Consolidated PPP Law	SPS consolidated version of DL 42/2012 PPP Law as amended
Public companies/SOE	
DL 14/2003	Decree Law No.14 of 2003 on Public Companies
ADB summary sheet	Pacific Islands reforming SOEs
ADB TA report 2019	ADB TA report December 2019 Timor Leste: implementing reforms for growth and competitiveness
ADB PEM Dec 2017	ADB Pacific Economic Monitor, December 2017 Pp16-18 SOEs in Timor Leste

GD 2_2004	Government Decree establishing SAMES as SOE <i>-subsequently restructured as autonomous non-commercial entity</i> (source – ADB SEM Dec 2017)
Anti-corruption	
DL 08/2009	Anti-Corruption Commission (CAC) Comissão Anti-Corrupção
Law 07/2020	Medidas de Prevenção e Combate à Corrupção [Measures to Prevent and Combat Corruption]
Money laundering/terrorist financing	
RG 10/14 amended by RG 18/2016	Establishing National Commission Comissão Nacional para a Implementação das Medidas Destinadas ao Combate ao Branqueamento de Capitais e ao Financiamento do Terrorismo (CNCBC)
CNCBC Strategic Plan	CNCBC Strategic Plan 2016-2020
L 05/2013 Amending 17/2011	AML regime Consolidated version of amended law in Annex to L 05/2013
Other laws and so on	
Law 09/2005	Petroleum Fund Law
GR 11/2010	Government Resolution fighting bad governance in public administration
DL 33/2012	Decree Law No.33 of 2012 Petroleum and Geology Institutes power to partner
DM 1/2008	Diploma Ministerial No.1 of 2008, Mineral extraction licensing
DL 18/2010	Decree Law No.18 of 2010 Special regime for incorporation of companies [private companies]
DL 05/2005	Non-profit corporate bodies [establishment NGOs and so on]
PFM/Budget	
DL 13/2009	Budget Law Law No.13 of 2009 Budget and Financial Management
Guidelines	
Vehicles procurement	MoT Vehicles procurement 27 January 2009
MoF Procurement	MoF Procurement Procedure Guidelines 04/2009/IVGC/MF
Strategic Development/Sustainable PP	
SDP Roadmap	Timor-Leste SDP Roadmap for implementation (v.2017)
Government of Timor-Leste, 2017	Timor-Leste's Roadmap for the Implementation of the 2030 Agenda and the SDGs", http://timor-leste.gov.tl/wp-content/uploads/2017/08/UNDP-Timor-Leste_SDP-Roadmap_doc_v2_English_220717.pdf .
Government of Timor-Leste, 2019	Report on implementation of sustainable development goals Voluntary National review of Timor-Leste 2019. Government of Timor-Leste
Strategic Papers/Economic, PFM Assessments	
Government of Timor-Leste, 2017	Timor-Leste Strategic Development Plan 2011-2030
Government of Timor-Leste, 2021, 2022	Budget Books

Government of Timor-Leste, 2018	Program of the eight Constitutional Government for the 2018-2023 Legislature http://timor-leste.gov.tl/?cat=39&lang=en#prog5.3.5
PEFA Secretariat 2020	Public Expenditure and Financial Accountability (PEFA) Assessment 2018 Public Financial Management Performance Report
EU/Ecorys, 2020	PFMO Mid Term review report
World Bank, 2021	Enterprise Surveys, Timor-Leste 2021 Country Profile
World Bank, 2021, 2022	Timor-Leste economic report
IMF, 2021	Article IV consultation with Timor-Leste during May 4-18, 2021
ILO, 2016	Enabling Environment for Sustainable Enterprises in Timor-Leste.
Asian Development Bank, 2019	Construction Market Analysis
The World Bank Group, 2020	Doing business
UN ESCAP, 2019 The Economic and Social Commission for Asia and the Pacific (ESCAP)	Regulatory Policies and ICT Trends: Insights from Timor-Leste Asia-Pacific Information Superhighway (AP-IS) Working Paper Series
European Union, 2018.	Timor-Leste Roadmap for Engagement with Civil Society 2016–2020 (update 2018). https://eeas.europa.eu/headquarters/headquarters-homepage/50970/timor-leste-roadmapengagement-civil-society-2016-2020-update-2018_pl .
ADB, 2019	Civil society brief
Global Sources	
Transparency International, 2023	Corruption Perception Index https://www.transparency.org/en/countries/timor-leste
World Bank Group, 2022	World Development Indicators
Open Budget Survey, 2021	https://www.internationalbudget.org/open-budget-survey/country-results/2019/timor-leste

Remarks: The above may not be a complete list of documents and websites consulted. All documents which were reviewed are listed as footnotes at the relevant paragraph of the Main Report and the Detailed Matrix (Volume I and II of the Report).

Annex 10: Recommendations for Amended/New Provisions in PPL 2005 and How They Are Addressed in PPL 2022

This table lists Gaps identified in Pillar I and Indicator 6 (legal review), where the linked recommendation suggests that a new or redrafted provision should be included in an updated PPL/the procurement legal framework.

The table references the relevant sub-indicator, the Substantive or Material Gap identified and the Recommendation. It indicates whether the Gap identified has been addressed, partially addressed or not addressed in PPL 2022.

Sub-indicator	Substantive or Material Gap	Recommendation	Addressed in PPL 2022?*
			Yes/Partially/ No
1(c)(b)	Advertising rules and time limits - Timelines/minimum time frames: PPL 2005 does not set out minimum time frames for particular procedures and there is no specific provision or reference to extension of timescales when international competition is solicited	Include provisions in the PPL setting out minimum time frames for submission of bids/proposals for each procurement method, with extended time frames for international competition	Y
1(c)(d)	Advertising rules - published content The content of the call for competition notice listed in PPL 2005 is not sufficient to allow potential bidders to determine whether they are able to submit a bid and are interested in submitting one as it does not specify that the subject matter of the contract must be described.	Include in PPL requirement to include information on subject matter of the contract in the call for competition notice.	Y
1(d)(c)	Grounds for exclusion (1) Conviction for offenses relating to terrorism, money laundering/terrorist financing, child labor and trafficking are not specifically listed as grounds for exclusion/disqualification in PPL 2005.	(1) List conviction for offenses relating to terrorism, money laundering/terrorist financing, child labour and trafficking as grounds for exclusion/disqualification in the PPL.	Y
1(d)(d)	Participation of State-Owned Enterprises (SOEs) There are no provisions in PPL 2005 or other public procurement related decree laws establishing rules for participation of state-owned enterprises which promote fair competition and create a level playing field for all competitors.	Include provisions in procurement legislation establishing rules for participation of state-owned enterprises that promote fair competition and ensure a level playing field for all competitors	N
1(e)(b)	Neutral and functional specifications: PPL 2005 does not refer to the use of neutral specifications and citation of international norms or for use of functional specifications where appropriate. This is an	Include provisions in the PPL requiring the use of neutral specifications and reference to international norms where possible, to ensure clarity of requirement and ensure that these	Y

Sub-indicator	Substantive or Material Gap	Recommendation	Addressed in PPL 2022?*
			Yes/Partially/ No
	important requirement to enable suppliers to understand clearly what is requested of them and to avoid artificially narrowing competition.	provisions flow through consistently into the Guidelines and Standard Procurement Documents. The use of functional specifications should, where appropriate, be permitted to promote innovation.	
1(e)(c)	Recognition of equivalent standards: PPL 2005 does not contain provisions requiring recognition of standards that are equivalent, when neutral specifications are not available. This is an important requirement to enable suppliers to understand clearly what is requested of them and to avoid [artificially narrowing competition]	Include provisions in the PPL requiring recognition of standards that are equivalent, when neutral specifications are not available and ensure that these provisions flow through consistently into the Guidelines and Standard Procurement Documents.	Y
1(f)(d)	Evaluation and award criteria: PPL 2005 does not require that procurement documents state the relative weights allocated to the criteria and the Best Practice Guide states that disclosure of the importance score (or weightings) is not mandatory.	Include provisions in the procurement legislation requiring publication of weightings (if used) in the procurement documents.	Y
1(g)(a)	Submission, receipt and opening of tenders – bid opening: PPL 2005 does not state that the opening of tenders takes place immediately following the closing date for bid submission. Opening immediately after the deadline for submission of tenders reduces the possibility of loss or alteration of proposals or submissions. The legal framework would benefit from greater clarity on this point.	Include provisions in the procurement legislation requiring tenders to be opened immediately following the date for submission, save in specified circumstances. Include relevant provisions to allow for future roll out of e-procurement	N
1(g)(d)	Disclosure of specific sensitive information: PPL 2005 does not include provisions protecting specific sensitive information including reference to protection of trade secrets and proprietary information, or protection of privacy and acknowledging the need to avoid disclosure of information that can be used to distort competition	Include provisions in the PPL to address protection of trade secrets and proprietary information, protection of privacy.	Y
1(h)(b)	Remedies available on hierarchical review: PPL 2005 does not specify the remedies which may be granted by the competent entity in a hierarchical appeal.	Include in PPL a list of the remedies which may be granted on hierarchical appeal.	Y
1(h)(b)	Right for judicial review: PPL 2005 does not specifically refer to a right for judicial review of decisions made on hierarchical appeal.	Include in PPL specific refer to right for judicial review.	Y
1(h)(e)	Publication of applications for appeal and decisions Applications for hierarchical appeal and decision on hierarchical appeal are not published in an easily accessible place on a central	Include provisions in PPL requiring publication for applications for hierarchical appeal and decisions on hierarchical appeal. Ideally, publication should be on a central online platform.	N

Sub-indicator	Substantive or Material Gap	Recommendation	Addressed in PPL 2022?*
	online platform to allow interested parties to be better informed as to the consistency and fairness of the process.		Yes/Partially/ No
1(i)(a)	Contract management functions and responsibilities: The Public Contracts Law lacks detailed provisions on a some matters required to ensure complete and timely contract implementation, such as monitoring and supervision of contract delivery and monitoring contract performance clauses.	Include in the procurement legal framework clear and appropriately detailed provisions defining the functions and assigning responsibilities for undertaking contract management including monitoring and supervision of contract delivery and monitoring contract performance clause . More detailed provisions could be incorporated in standard contractual documents for mandatory use	P
1(j)(a)	Use of e-procurement: At present, there is no e-procurement system and e-procurement solutions are not currently available. Thus, there are no provisions in PPL 2005 which allow or mandate e-procurement solutions covering the procurement cycle. It is advisable for the legal framework to allow for the introduction and roll out of e-procurement system/solutions, whilst acknowledging practical constraints due to lack of necessary user infrastructure across the country. To derive greatest benefit from the introduction of these new ways of working, the PPL should include provision to make use of the e-procurement system/e-procurement solutions mandatory for public services, when the solutions become available and necessary user infrastructure is achieved.	Include provisions in the PPL setting out the principle of transparency, with unrestricted and full access to the e-procurement system for all stakeholders, as and when the e-procurement system becomes available and necessary user infrastructure is achieved.	Y
1(j)(b)	Use of tools and standards providing access to e-procurement system: At present, there is no e-procurement system. Thus there are no provisions in PPL 2005 for the use of tools and standards for access to an e-procurement system. With the potential introduction and roll out of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly address the requirements for tools and standards applying to an e-procurement system to provide unrestricted and full access, taking into consideration privacy, security of data and authentication.	Include provisions in the PPL to ensure that requirements for tools and standards applying to an e-procurement system are met, to provide unrestricted and full access, taking into consideration privacy, security of data and authentication. Further detail may, for example, be included in rules on operation of the e-procurement system when it is rolled out.	Y
1(j)(c)	Informing interested parties of e-procurement: At present, there is no e-procurement system. Thus there are no provisions in PPL 2005 requiring interested parties be informed which parts of the	Include provision in the PPL requiring public services to inform interested parties which parts of the processes will be managed electronically as and when the e-procurement system becomes	Y

Sub-indicator	Substantive or Material Gap	Recommendation	Addressed in PPL 2022?*
	<p>processes will be managed electronically. With the potential introduction and roll out of e-procurement system/solutions in mind, it is advisable for the legal framework to clearly set out a requirement for interested parties to be informed which parts of the processes will be managed electronically, which can then be reflected in content of standard bidding documents for mandatory use.</p> <p>As a period of transition from paper based to e-procurement is likely, it is also very important for clarity and certainty to include provisions in the legal framework to clarify whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-Procurement.</p>	<p>available. Consider Including in standard bidding documents information on which parts of the processes will be managed electronically. Include provisions in the legal framework confirming whether paper-based procurement is still permitted, in what circumstances and whether in parallel or as an alternative to e-Procurement</p>	<p>Yes/Partially/ No</p>
3(a)(c)	<p>Incorporation of SPP into procurement cycle: PPL 2005 does not contain comprehensive measures allowing for sustainability (economic, environmental and social criteria) to be incorporated at all stages of the procurement cycle.</p>	<p>Include provisions in PPL to allow for all aspects of sustainability (economic, environmental (including climate change), and social (including gender responsive public procurement) to be incorporated at all stages of the procurement cycle.</p> <p>Provisions in PPL should be supported by practical guides on how to incorporate and apply sustainability considerations into all stages of the procurement cycle together with capacity building to ensure appropriate and effective application and use in practice</p>	<p>P</p>
3(a)(d)	<p>Sustainability criteria: PPL 2005 does not fully address all aspects of sustainability (economic, environmental and social) in sufficient detail to ensure balanced application of sustainability criteria and ensure value for money.</p>	<p>See recommendation at 3(a)(c) above.</p>	<p>P</p>
6(a)	<p>Definition of procuring entities: Procurement entities are not clearly defined in PPL 2005. Several terms are used in PPL 2005: “Public Service”, “adjudicating entity” or “provisioning entity” hence it is difficult to clearly establish what are the procuring entities subject to the PPL 2005.</p>	<p>The higher level legislation to clearly define the procuring entities.</p>	<p>Y</p>